Contested Commons /
Trespassing Publics

A Public Record

Contested Commons / Trespassing Publics: A Public Record
Produced and Designed at the Sarai Media Lab, Delhi

Conference Editors: Jeebesh Bagchi, Lawrence Liang, Ravi Sundaram, Sudhir Krishnaswamy
Documentation Editor: Smriti Vohra
Print Design: Mrityunjay Chatterjee

Conference Coordination: Prabhu Ram
Conference Production: Ashish Mahajan

Free Media Lounge
Concept/Coordination: Monica Narula
Production: Aarti Sethi, Aniruddha Shankar, Iram Ghufran, T. Meriyavan, Vivek Aiyyer

Documentation: Aarti Sethi, Anand Taneja, Khadeeja Arif, Mayur Suresh, Smriti Vohra, Taha Mehmood, Vishwas Devaiah
Recording: Aniruddha Shankar, Bhagwati Prasad, Mrityunjay Chatterjee, T. Meriyavan
Interviews Camera/Sound: Aarti Sethi, Anand Taneja, Debashree Mukherjee, Iram Ghufran, Khadeej Arif, Mayur Suresh, Taha Mehmood

Web Audio: Aarti Sethi, Bhagwati Prasad
http://www.sarai.net/events/ip_conf.htm

Conference organised by
The Sarai Programme
Centre for the Study of Developing Societies, Delhi, India
www.sarai.net

Alternative Law Forum (ALF), Bangalore, India
www.altlawforum.org

Public Lectures in collaboration with
Public Service Broadcasting Trust, Delhi, India
www.psbt.org

Published by
The Sarai Programme
Centre for the Study of Developing Societies
29 Rajpur Road, Delhi 110054, India
Tel: (+91) 11 2396 0040 Fax: (+91) 11 2392 8391
E-mail: dak@sarai.net

Printed at

ISBN 81-901429-6-8

November 2005
Delhi, India

Price: Rs 100, US$ 10, € 10

Contents

Introduction

The transformation of Intellectual Property Law, from an esoteric legal subject to an intrinsic part of daily conversation and discussion today, has occurred in a relatively short span of time. Over the past few years, the aggressive acceleration of property claims into all domains of knowledge and cultural practice has interpolated almost everyone, from the academic to the musician, into the heart of the IP debate. No account of the contemporary moment would be complete without an examination of the dominance of the copyright sign or the small print of the trademark on our lives.

In many ways, the mere act of looking at, reading, listening to, making, understanding, or communicating any objects that embody thought, knowledge or feeling, are as fraught with danger and anxiety today as the appropriation of material wealth, or the trespassing into private property, were through much of human history.

The concern over the expansionist tendency of intellectual property has also motivated a rearticulation of the importance of the commons of knowledge and cultural production. This is exemplified by various processes: through the important scholarship that has arisen on the public domain, the increasing popularity of non-proprietary modes such as free software, open content, digital networks, etc. A number of these concerns have historically emerged from the experience of Europe and the United States.

However, when one attempts to translate the terms of the IP debate into the contemporary experience of countries in Asia, Latin America and Africa, it is difficult to locate any easy indexical reference of ideas such as the 'enclosure of the commons'. Intellectual property concepts folded into many of these nations through the dual tropes of a triumphalist fantasy of harnessing IP 'to catch up with the West', or an account of paralysing fear and images of persecution, destruction and violence that surround the reality of IP infringement. The latter is best exemplified by the sharp conflicts and anxieties over the prevailing mediascape (from non-legal software to cheap DVDs) that is a key aspect of contemporary urban experience in the developing world.

We, at the Sarai Programme at the Centre for the Study of Developing Societies, Delhi (Sarai-CSDS) and at the Alternative Law Forum, Bangalore (ALF), arrived at our perspective on the IP question through our different engagements with researching contemporary realities, looking at cultural production, at the processes by which media are generated, and at the manner in which law and legal instruments encroach upon the most intimate details of social and cultural life. Our interest in the terrain of IP overlaps with our ongoing curiosities and creative projects with regard to media production and experience, and digital proliferation.

We were motivated to organise 'Contested Commons/Trespassing Publics: A Conference on Inequalities, Conflicts and Intellectual Property' as a move towards addressing some of the complex questions, arising out of our work, about the modes in which IP plays out globally. Our intent was to open up various strands within the

existing global IP debate, and to create the foundations for a substantive critical intervention that would begin to see the question of IP in a more complete manner than that afforded by accounts of either crisis of knowledge/culture, or one of providing alternatives alone.

The conference, held in Delhi from 6-8 January 2005, brought together some of the leading minds on the subject from all over the world, and from a variety of disciplines and backgrounds – law, anthropology, media theory and history, economics, computer and information sciences, medicine, new media practice, contemporary art and social activism. What follows is a narrative summary of the discussions and debates that took place at this very stimulating event.

This book is our attempt to bring to public life the 'oral' practices that animated the conference. We had already recorded the proceedings, and these recordings were made available for browsing, free download and listening as audio files on the Sarai website (http://www.sarai.net/events/ip_conf.htm). On listening to these recordings, we realised that the 'orality' that made the conference exciting brought alive complex questions in an almost hyperlinked manner, provisionally, incompletely, but tantalisingly redolent with the possibilities of undertaking creative intellectual leaps.

We felt the need for a form that would make these possibilities more accessible and transparent. This book, the narrative and the transcripts of conference interviews, the discussions and conversations that it contains, the many unresolved questions, intriguing stories, elusive histories and angry assessments that it embraces, is an attempt to bring this palimpsest of possibilities to the attention of the curious and interested reader.

As an aide-memoire, or souvenir of that excitement, we hope it will contribute towards more original thinking and critical reflection on the vexation that is Intellectual Property.

It would be our pleasure to receive critical feedback, comments and suggestions from those readers who find it in their hands. In keeping with Sarai-CSDS tradition, and our commitment to queering the pitch of 'IP', the book's contents are available for free download and republication for non-commercial and educational purposes.

Conference Editors
November 2005
Delhi

Contested Commons / Trespassing Publics
A Conference on Inequalities, Conflicts and Intellectual Property

Conference Brief

The past three years have seen conflicts over the regulation of information, knowledge and cultural materials increase in scope and intensity across the globe. These conflicts have widened to include new geographical spaces, particularly China, India, South Africa and Brazil. Moreover, a spectrum of new issues, including the expansion of intellectual property protection to almost all spheres of our social life, has aggravated the problem. It is also important to recognise that the nature of the conflict gets configured differently, and often in a radical manner, as we move from the United States and Europe to social landscapes marked by sharp inequalities, in Asia, Latin America and Africa.

The information era has brought with it an intricate set of tribulations in the form of a set/sets of rights seeking to control the use and dissemination of all forms of information and media practices. The last few decades have witnessed an unbridled expansion of property rights/regimes in the sphere of knowledge and cultural materials. The expansion of copyright has generated intense conflict over the incessant production and archiving of information, and seeks to regulate the availability as well as the scarcity of this commodity.

Rights-based regimes appear to assume that the creation of new information takes place in complete isolation from past sources of creation and from the public domain. Absolute notions of property rights can be visualised, felt and absorbed through various media, activities and daily practices. The language of copyright, patents, trademarks, etc., has so permeated consumer culture globally that we have almost become blind to the range of new problems this language poses to the knowledge commons, creativity and innovation.

The notion of property rights in information envisages a world wherein each act of creation and innovation is defined and restricted within the domain of property regimes. But the culture of innovative practice does not fall within this purview. Practices such as file-sharing, music downloading, peer-to-peer networking, photocopying or the creation of joint authorship/collaborative production through the Internet, allow users/creators/innovators to engage with the world of information in a manner that clashes with the rules of the game set in place by the powerful groups that have introduced, reified and valorised rights-based language. This conflict has led to information being policed, through the criminalisation of specific activities in the area of knowledge production and distribution. It has also led to acts of serious cultural appropriation and exclusion.

In the light of such conflicts, this conference intends to examine whether it is possible to revisit earlier discussions on creativity, innovation, authorship and the making of property. Is it possible to draw comparative registers between earlier histories of violence and dispossession that accompanied the making of property, and the current turbulence around intellectual property on a world scale?

The conference will probe existing arguments within the open source movement, and push the debate on traditional knowledge and biodiversity. It will also attempt to facilitate a dialogue between different movements in media history – print, film, music and the new media – so as to prise open urgent questions around cultural production, circulation and distribution, and interrogate the philosophical persuasions, social dynamics, political economies and legal grids that constitute the parameters of the contemporary global debate on intellectual property.

July 2004

Rapporteur's Note

In *Six Memos for the Next Millenium*, Italo Calvino remarked that with regard to the narrative genre of the very brief tale, he had so far not found any opening line to match this one by the Guatemalan writer Augusto Monterroso: "*Cuando despertó, el dinosauro todavía estaba allí*" (When I woke up, the dinosaur was still there). This observation aptly reflects my experience of compiling this report, over long weeks of concentrated work. I was intimidated by the sheer magnitude and quantity of what the Sarai documentation team had gathered from this conference. I was overwhelmed by the nature of the material: the complexity of categories, symbols, facts, ideas, subjectivities, styles; the contrapuntal voices and trajectories, tensions and interweavings; the avid explosion of detail; the tenacity of assertions and denials. Occasionally, following the unexpected momentary withdrawal of ongoing discursive clamour, I became disoriented through sudden contact with pure signification, the rustle of single leaves in the forest of language.

Each time I felt I was a few faltering steps closer to emergence from the labyrinth of ratiocination, each time I felt I had sifted through the masses of information with at least partial clarity and efficiency, each time my fingers withdrew from the keyboard after editing a segment, I would wake up, so to speak, and find the dinosaur still there. Not having any prior conceptual understanding of intellectual property, I initially responded to the conference material as if it was indeed an alien manifestation. I scrutinised it with awe, just as one might gaze at the bones of dinosaurs in museums, or as one might attempt to uncover inherent structure and order with the meticulous strokes of a paleontologist's brush, all the while slowly becoming aware of the incredible subtleties and complicated evolutionary grace immured within grotesque proportions. Insistently, the discourse revealed itself as a living topos of ardour and antinomy, of opacities and translucencies, democracies and hierarchies contained within each other, and within what appeared to be accepted historical orders and self-organising sociocultural systems. And having undertaken the risk – and shock – of such an encounter, I also found myself returning over and over to the incandescent flicker of rebel subtexts walled within standard theoretical parameters, like fireflies in a glass jar.

"Contested", "trespassing", "publics"...What was being contested, and by whom, for whom, with whom? How should one define the act of trespass, locate its stubborn root, predict its revolutionary consequences? Who were these publics: a few known, many unfamiliar; some identified, most unnamed; invisible abstractions, yet powerful presences muscling themselves into each domain related to intellectual property?

And how did one interpret the "commons"? Did IP discourse imply that if this phenomenon was actualised, appropriately and adequately, it would enable the crystallisation of new kinds of equity, and more ethical practices of production and consumption? Did it imply a radical dismantling of the established notions of enclosure, property, authorship, ownership, and of claims violently asserted in the interest of profit? Did it imply a genuine, tenable expansion of alternatives to counter

the fiercely entrenched dialectic of exclusion and inclusion? Did it imply a crucially different ecological awareness? Did it imply an irreversible reconfiguration of the aesthetic and cognitive frames that are the site of our imaginaries, as well as an unrelenting reassessment of the thorny politics of race and class, of gender, nation, hemisphere?

Those of us more optimistic about the potential of the human spirit might wonder if the actualisation of a true commons also implies a vision of larger unity and transformed relationships, as in Borges' beautiful lines: "*Nadie es la patria, pero todos los somos/ Arda en mi pecho y en el vuestro, incesante/ Ese límpido fuego misterioso*" (No one is the homeland, it is all of us/ May that clear, mysterious fire burn/ Without ceasing, in my breast and yours).

And the most incorrigibly idealistic among us might even add that if we seriously, successfully, manage to rework our understanding of all dimensions of property (material and immaterial, individual and collective), we could indeed some day wake up to find that the dinosaur of the deeply-embedded human impulse to enclose, to appropriate and possess, to privilege the self at the cost of the other, is miraculously no longer there.

Smriti Vohra

October 2005

New World Order and the Public Domain

John Frow, *University of Melbourne, Melbourne*

John Frow began with the claim that the commons in information has been the major source of new property rights in the contemporary capitalist order, and it has been exploited and degraded in an increasingly systematic manner through a range of international institutions and treaties, and by way of a constant pressure on trading rights. In its international dimension, this system of unequally distributed immaterial property rights has all the markings of an imperialist order. At the same time, the privatisation of the public domain affects many areas of daily life.

The speaker expressed concern about the increasing privatisation of the public domain. Citing examples from contemporary events, he described the new intellectual property laws bequeathed to Iraq by Paul Bremer, the retiring Administrator of the Coalition Provisional Authority, before the "transfer of sovereignty" in June 2004. This legislations amended Iraq's original IP law of 1970, and is binding on future Iraqi governments unless it it repealed. Amongst other changes to legislation governing patents, industrial design and industrial circuits, changes are introduced to Iraq's plant variety law, which had previously prohibited the private ownership of biological resources. These changes make the saving and exchange of seed by and between farmers illegal whenever that seed is a protected variety. The traditional crop variety used by farmers, and developed over millenia of selective breeding, will not be eligible for protection under this order, because they cannot meet the conditions of "distinctiveness, uniformity and stability" required for registration; traditional crops are variable and unstable, whereas scientifically bred hybrid or genetically modified crops are not. The seeds that farmers will now be allowed to plant ("protected" crop varieties brought into Iraq by transnational corporations in the name of agricultural reconstructions) will be the property of the corporations.

This legislation is a model of the kind of legislation that the US wants to see enacted globally, according to the speaker. Such laws directly confront the age-old forms of agriculture that hold no prospect of profit for US corporations. Commentators have argued that farmers are given a choice regarding whether to use traditional varieties or to adopt the genetically modified crop strains introduced by multinational corporations. But actually farmers do not have a choice, because genetically modified crops contaminate other crops through cross-pollination. "Genetically modified (GM) crops are self-infringing; when propagated naturally, they copy themselves and thus produce a criminal act quite independent of the intentions of the grower."

Frow narrated the widely publicised story of a Canadian farmer, Percy Schmeiser, whose canola crop was contaminated by Monsanto's 'Roundup-Ready' gene from GM crops. The Supreme Court of Canada determined that patent rights on a gene "extend to the living organism in which it is found. Consequently, saving and planting seed containing a patented gene without authorisation from the patent holder is illegal." The fact that Schmeiser had no intention of planting Monsanto's seed, and didn't know that his seed was contaminated, and also the fact that Monsanto's failure to guard against cross-pollination destroyed the results of Schmeiser's own selective breeding of his grain, "were held of no account beside the fact of infringement".

A similar story is reported from Argentina, where for a number of years farmers were allowed to save and multiply Monsanto's 'RR' soybean seed so that the crop expanded exponentially, reaching 14 million hectares in 2003-04; then farmers began

to be hit with demands for royalty payments, even though Monsanto does not have patents rights over the trans-gene in Argentina. Frow asserted that the strategy of the multinationals is to "focus on the major cash crops (cotton, soybean, maize, etc.) and find an entry point, then contaminate the seed supply and step in to take control". The pattern is repeated in Brazil and Uruguay with soybeans, in India and West Africa with cotton, and in Mexico with maize.

In this system of bilateral/multilateral agreements, which build in the highest standards of protection available as the new norm, intellectual property "is the price that countries have to pay, largely to US companies, to enter the world trading system". These stories exemplify certain moments in the world order, "an order at once of trade and geopolitical hegemony", established by the TRIPS (Trade-Related Intellectual Property Rights) agreement of the Uruguay round of GATT (General Agreement on Tariffs and Trade), concluded in 1993 and ratified in 1994. The "sheer implausability" of the TRIPS agreement had to do not only with the fact that it seems to run counter to all the states except the US, Japan and the European Union, but also because the "dramatic extension of its monopoly rights in intellectual property came about in the context of a trade regime that is ostensibly committed to the reduction of cartels and monopolies and the pursuits of full and free competition".

The speaker pointed out that currently only six countries (Brazil, Argentina, China, India, Korea and Mexico) have serious generic manufacturing capacity with regard to pharmaceuticals, and all are now obliged to comply with TRIPS. The reality is the "large companies own more intellectual property now than at any point in human history"; and that we are moving towards a world in which large pharmaceutical companies own all the key patents in the markets where they perceive the threat of competition from generic manufacturers. Frow described how in March 2000 the US and British governments signed a joint decision not to patent the human genome, a decision precipitated by attempts by US biotechnology companies to patent large tracts of the human genetic commons. There has been a continuous tension, however, between patent laws in the US and in the rest of the world: in the UK, for instance, DNA *per se* is not patentable, but functional methods or products arising out of it are. In the US, raw DNA can be patented. By September 2004, "over three million genome-related patent applications had been filed worldwide and more than half a million patents had been granted or were pending on the genes and partial gene sequences".

Discussing the idea of the public domain in relation to IP law, the speaker stated that "in all developed doctrine, it is the envisaged good that permits, and is actively fostered by, the temporary and limited monopoly rights that are exercised from it". However, the rhetoric that currently holds sway in relation to commercially valuable intellectual property is one of protection. "Any IP lawyer will define the relevant issues in the field in terms of whether the protection for a particular right-holder is adequate; the question of the adequacy of the countervailing protection for the domain, and thus for the users of intellectual property, never arises; it is not thinkable within the ambit of the prevailing legal imaginary. The simplest of our tasks is to make it thinkable again: to force the question of the protection of the public domain back on the agenda and to ask the question every time the question of protection arises."

Frow concluded by returning to the notion of "intergenerational transfer", which is "a way of thinking about the public domain that gets us beyond the individualism, the essential selfishness of the notion of personal rights. The value that we put on the public domain of raw intellectual materials that can be used by all and claimed by none is a value not just for ourselves but for those who come after us; our relation to this domain is not just one of use but one of stewardship for our children and our children's children." The metaphor of intergenerational transfer "appeals to

something larger than our own interests, however universal we may think these interests are; and it gets at that element of commonality which is so crucial to the public domain. It puts the onus, too, on those who would convert this domain into private property to explain what kind of world they would leave behind."

Rewiring the Circuit: Property and the Public Domain

A Rights-Based Conception of the Public Domain
Sudhir Krishnaswamy, *Pembroke College, Oxford*

Location, Location, Location: Property and Cultural Critique
Danny Butt, *Independent Consultant*

Species-Beings: Towards a Twenty-First Century 'Commonism'
Nick Dyer-Witheford, *University of Western Ontario, Ontario*

Sudhir Krishnaswamy's presentation focused on the current ways of framing the debate on intellectual property and traditional knowledge in India. Neither approaches 'innovation', or situates itself in relation to the public domain and commons. The speaker gave three examples. First, the debates around the Patent Amendment Act by decree. The debate is mostly about the availability of cheap HIV/AIDS drugs, and public health. Second, the traditional knowledge (TK) debate, amenable to group rights, which has captured the imagination of civil society groups and environmental groups. However, TK is still thought of within the parameters of "property", and "falling into the hands of the wrong people". The TK debate as it exists is a failure of the commons-based approach. Third, the spectacle of audio/video piracy, which is only just beginning to receive critical attention. Understanding "piracy" and supporting the public domain is something most theorists tend to be uncomfortable with.

The speaker asked why public domain and/or commons arguments are either absent, or considered problematic, in IP discourse in India. He outlined three major approaches that typify current public domain arguments: they are technologically deterministic; they are dependent on political principles of individual sovereignty,

as operating (or not) in a given society; and they are linked to political economy arguments, which need to be reworked in new contexts, outside of the North. These factors had to be taken into account if the contours of the public domain were to be reconfigured.

Speaking of the problem of technological determinism, Krishnaswamy invoked the work of David Lange, and also examined the expansion of IP rights in Hollywood – "affirmative protection for creative appropriation" – an approach which sees the public domain/commons as opposed to property. He then spoke about the work of Lawrence Lessig and Yochai Benchler, who are concerned with Internet and digital culture. Lessig focuses on cultural change, but the Internet is central to his thought. Benchler analyses what makes a "network information society", where non-market production plays a much larger part; and which is characterised by "radical decentralisation". In India, pirate markets share some of the characteristics of the network information society, but they are physical markets and have their own material imperatives. Clearly, the public domain argument needs to move beyond the Internet and the cyber criteria of the "network information society".

With regard to the political economy argument, Krishnaswamy invoked Lessig's conception that, through peer-to-peer networks, new techniques challenge the old industrial monopoly; P2P networks are part of an argument for competitive markets. But there is nothing "immutable" about the Internet transforming society, and there is an emphasis in Lessig's work on the "transformative" usage of cultural products. This political economy argument of the P2P networks has to go much further than competition, especially in India, where political economy concerns are focused largely on globalisation and issues about radical inequality, terrain excluded from Lessig's conceptions. While in the US, the right to free speech of the individual is important in public domain arguments, here in India, the issues of justice and group rights are far more important to the public domain. The patent debate has been concerned with arguments of health, and arguments of access can be used to justify our pirate markets.

The speaker concluded by describing the Ten Sports case, in which the state stepped in to recognise the rights of the people to freely watch Indo-Pakistan cricket, irrespective of the telecast rights bought by Ten Sports. This was an important marker in the history of the subordination of property rights to constitutional rights in India. There was an urgent need to initiate a debate around a constitutional public domain. The paper concluded that while several rival conceptions are "theoretically plausible and useful", a constitutional rights-based approach is valuable for the following reasons: it accommodates most of the theoretical concerns advanced by other accounts; it allows for a normative analysis of practices and expectations of citizens as users and producers in all fields of knowledge production and consumption; and it enjoys a "doctrinal and normative hierarchy" over other private law methods of structuring access and use of information/knowledge.

Danny Butt began his presentation by invoking Maori protocols of oratory and discussion, and particular structures of address that showed respect for the hosts, fellow participants, history, nature, ancestors, deities; part of cultural rituals that had been targets of colonial repression. "To white settler pragmatism, such formality seems arcane and unnecessary", and even "closed"; to a state "obsessed with controlling the public domain as a space where each should be the same, such processes are like the *hijab* in the French schoolyard, an irruption of difference that threatens the very idea of democracy and freedom".

Butt described the Tohunga Suppression Act of 1907-1962, a New Zealand law specifically outlawing the application and maintenance of traditional knowledge and its place in cultural politics. He clarified that he was not present to "trade in the politics of virtue" but was trying to

translate academic settings/questions into older contexts and traditions. "To put it bluntly, for Maori and, I suspect, for many Indigenous people, the stakes with regard to intellectual property are much higher: firstly, they are a matter of life and death, particularly as they pertain to traditional foods and medicines; and secondly, the effects are always discussed in terms collectively rather than individually as the life and death is for an entire economic and social system. Anti-colonial activity is necessarily an interdisciplinary project, and one with no quick solutions."

The speaker pointed out that he could discuss bio-piracy, the TRIPS agreement and legislative protection for traditional knowledge quite adequately in his home context of New Zealand, but in the "Creative Commons/DRM world", the discussions focus on fair use, copyright, access to cultural materials, and freedom. Danny wanted to know why the two conversations rarely crossed over. He asked if it was possible to create some "*rapprochement*" in the "relatively discrete spaces of First and Third World activism". Indigenous scholars have already been paying close, and sometimes "bemused", attention to the IP debate in the West; it would also be productive for Western scholars to learn about IP from traditional knowledge systems and the work being done in this field by Indigenous activists, in the battle against "transnational info-exploitation".

According to Butt, the value of Indigenous epistemologies for Western public culture is that "by attaching culture to land they provide a lasting critique of disembodied knowledge, and disembodied property". In the West, property is "overwhelmingly focused on transfer". Economics has focused on the transfers in the market and "almost completely neglected the question of the initiation and termination of property in normal production and consumption." In other words, the Western theory of property did not give an account of the "whole life-cycles" of a property right; such a "suppression of history" was "endemic" in market-based property systems, which thus "fall into the trap of the present". Indigenous epistemology tends to emphasise historical genealogies of land and cultural formations; "the land is not stripped of its history in order to travel on circuits of exchange, and the same applies to knowledge". For the Maori, "knowledge is a gift from the ancestors".

Butt raised the issue of "geopolitical formations" and asked, "who gets to be public" in the "actually existing democracy". Citing Dipesh Chakravarty and other scholars, the speaker pointed out that these theorists claim that the creation of the abstract "public sphere" was through writing, at the expense of oral culture. For Indigenous groups, there are limitations of public writing as the space of recognition within the law. Historians seem to extend an invitation to "transcend" one's given, particular identity in favour of a general one, such as the nation or class. Butt also cited the scholar Rosemary Coombe's statement that the oral tradition "embodies" cultural knowledge, it is not abstract, common or transcendent. The "embodied" aspect of the oral tradition is a threat to movements such as the Creative Commons and open source, that base themselves firmly within Euro-US epistemology. The speaker felt that anti-IP critiques focused on abstract conceptions of the public domain will ultimately fail as social movements "because the propensity to use abstract language is itself a class-bound cultural skill...that inhibits the formation" of such movements. At the same time, the creative sector (where much of the energy of the commons movement is directed) "is ultimately about embodied knowledge and diversely situated cultural practices, not publics, and should thus be able to relate to located activities in cultural politics".

The speaker asserted that "insightful responses" to the IP debate being made from the Third World, by state agencies, Indigenous scholars and NGOs/activists, should not be characterised as "national protectionism". Such terminology was actually quite incorrect, "for in the case of Indigenous groups their work is often directed against nation-states that fail to grant them rights of

property and self-determination that are equal to other citizens, most particularly corporate citizens...I would prefer it if we could use the term 'national protectionism' toward the activities that truly fit this description, such as the cynical manipulation of national legal frameworks by First World information traders, who are in no sense operating in a free market, even if such a thing existed."

Butt then described his discussion with the scholar Gayatri Spivak, regarding the "rapid infomationalisation of the rural" and the "massive information asymmetries between those controlling and those subject to such informationalisation". In such an environment, what should research priorities be, and what is the role of the urban scholar or information agent within the system? Taking up Spivak's question "Is language local?" the speaker stated that the questions of language and locality are deeply intertwined in the concept of property as it has been historically conceived. But thinking about these terms generates a "crucial kind of self-consciousness" that enables a more authentic situating of information critique. Butt claimed that Euro-American theory was dominated in general by a "blinkered epistemology" and a "resolute avoidance towards issues of differential consciousness and thinking outside one's subject position".

The speaker concluded that productive dialogue was possible only when those engaging in it are clear about their respective locations and accountabilities. The main question was not what new critiques of property could be generated, but what specific scenes or contexts of action we are prepared to situate ourselves in. "Knowledge is never free, it is always embedded in a place and knower." To build a popular alliance against IP exploitation between, first, commons movements "recovering an abstract historical memory" within Anglo-American capitalism, and second, the specific historical experiences of those colonised by it, is a complicated task that will require us to "suspend our taxonomies at key junctures".

The presentation by Nick Dyer-Witheford used a digital analogy for Karl Marx's 1844 *Economic and Political Manuscripts*: he called it a "weblog". The speaker gave an account of the concept of "species-being". This is the term the young Marx used to refer to humanity's self-recognition as a natural species with the capacity to transform itself through conscious social activity. Marx's was a "revolutionary-romantic description": man as species-being was "a corporeal, living, real being, full of natural vigour...man with his feet firmly on the solid ground, man exhaling and inhaling all the forces of nature...an objective, sensuous being and therefore a suffering being, and because he feels what he suffers, a passionate being. Passion is the essential force of man energetically bent on its object."

According to the speaker, the "four-fold estrangement" of the worker, as defined by Marx, implied being excluded from the possibility of self-transformation. Marx did not present alienation as a static, reified concept, but rather as a multifaceted set of social relationships. In general, he describes an estrangement from labour that contains two components: estrangement from the product of a worker's labour, and estrangement from the act of production itself. In the act of alienated production, people become alienated from themselves. Marx consistently contrasted alienation against a more ideal condition. He sees humanity as originating in a material, metabolic interaction with nature, a dialectical relationship. Nature conditions productive activity, while at the same time, people transform nature to meet unique human needs. Labour is central to what it means to be human, and the product of labour is the natural expression of our human nature. The objective way in which people organise themselves around their own reproduction and provision of needs, conditions the subjective nature of individuals. They produce not only for their immediate needs, but produce also when they are free from physical need.

The very act of labour and production from the environment is central to the development of human nature or "species-being". Marx claimed that the whole essence of a species, its "species character", is contained in the character of its life activity; and free, conscious activity is people's species character. People labour, not because they have to but because it is a unique human characteristic to want to labour and produce beyond necessity. To create things in the mind and produce them in reality is the expression of the human species. In the act of meeting needs through productive labour, people actively alter their surroundings, and, subsequently, their social relations and their own nature. "Species-being" is the subjective thought and objective action of human individuals as a social totality interacting with the external environment.

"Species-being" implies not just existence, but the special possibility of social cooperation and techno-scientific capability, collectively transforming human nature. It is an ignored term; Althusser considered it to be an example of "residual bourgeois humanism". Through the mechanisms of "Capital" and "Religion", this potential for transformation is appropriated, resulting in brutal alienation. Species-being is the outcome of the struggle to become human. It does not just involve the struggle of the wage labourer, but "the unfolding of the present living species". Species-being implies people in a harmonious, non-exploitative relationship with nature, emancipatory social relations, humane science and technology.

For Marx, under the capitalist system of production, although the product of a worker's labour is the embodiment of that labour, the product does not belong to the worker: it becomes an alien object to the worker, exists outside the worker as something independent, and becomes a power on its own, confronting the worker. The worker is also alienated from the act of production. Marx argues that if the product of labour is alienation, the act of production is the process of alienation: "production itself must be active alienation, the alienation of activity, the activity of alienation". The act of labour is not a creative, spontaneous activity belonging to the worker but an onerous, life-draining loss of productive energies to another, the capitalist. Once people are estranged from the activity of their labour, they are estranged from themselves. Labour becomes not the means for realisation of the self but an activity that denies the self. It is not the satisfaction of a need but merely a means to satisfy needs external to it.

This mode of self-alienating labour denies people their "species-being", their true existence. The alienation from the product and process of labour lays the foundation for the alienation from the environment. The workers imbue the products of nature with their labour, and at the end of the production process, the products of nature, now the property of the capitalist, are stripped from the workers. The estrangement of people from the natural environment and creative life activity alienates them from their "species-being", their essential nature. Under capitalist production, labour has been reduced to the means to acquire an existence. And just as people are alienated from the product and process of their own labour, people are alienated from the activity and objects of other people's labour as well, from social relationships, as well as from themselves.

According to the speaker, species-being has been "hurled back to the table" by the Human Genome Project and the cyber-phenomenon of the World Wide Web. The debate has to be revived in the time of the "post-human". The actors in the struggle for species-being submit to the logic of neoliberal capitalism which treats human beings as commodities. Today, species-being manifests in a techno-scientific apparatus capable of operationalising a whole series of post-human or sub-human conditions. "By entrusting the control and direction of this apparatus to the steering mechanism of marketisation, cognitive capital is navigating its ways onto some very visible reefs: a global health crisis, biospheric disaster, yawning social inequalities dividing a world well seeded with terrifying arms."

Species-being movements are "bio-political activisms" that contest this trajectory, opposed to both the world market and reactive fundamentalisms, characterised by cosmopolitan affinities, transnational egalitarianism, implicit or explicit feminism, and a strong ecospheric awareness. Generated within and against a capitalism that is "global" both in its planetary expansion and its ubiquitous social penetration, species-being movements will aim to fulfill the universalisms the world-market promises but cannot complete. "They will invoke some of the same intellectual and cooperative capacities that cognitive capital tries to harness, but point them in different directions, and with a vastly expanded horizon of collective responsibility; and they will establish networks of alternative research, new connections and alliances; they build a capacity for counter-planning from below."

The speaker described species-being in terms of an evolutionary paradigm. Thought of as a movement, species being contests the genetic exploitation of human nature. This is most strongly represented by bio-political activists, who speak up for the bio-commons. In the conflict between capital and species-being, we need to intervene "from below" in techno-scientific debates. Species-being is "messy", in the sense that it allows you to say "Yes" and "No" to technological situations. It is not a wholesale rejection of technology. Instead, it imagines a technologically transformed humanity, "post-human", as different from humans as humans are from apes. Marx celebrates these possibilities, and is also intimidated by them.

But species-being is also a critique of inequality in these situations; and of neoliberal eugenics which render alien those who are underprivileged. It sets up the "post-human" versus the "not-yet-human". Dyer-Witheford concluded that we need a "counter-utopianism" to counter the neoliberal imagination of the future. "And we are much closer to the possibilities of species being in 2005 than in 1844."

In the discussion that followed, Brian Larkin pointed to a tension between Dyer-Witheford's presentation, Butt's presentation and John Frow's plenary lecture. He located this tension in the religious dimension. According to him, the public domain is uncomfortable with the idea of religion and does not know how to address it. Species-being and tribal notions of property both have a religious dimension, which is not sufficiently acknowledged or negotiated. Do discussions around Creative Commons think of it as a secular realm?

Butt replied that his conception of language may not be religious, but was more than purely technical; it had an "emotional affective dimension" that was at odds with the WASP (White Anglo-Saxon Protestant) political subject. Dyer-Witheford asserted that the "mystic" Marx specifically referred to the spiritual qualities of human existence, while critiquing religion. Marx explicitly spoke of mankind "inhaling and exhaling the forces of nature": the "romantic" thinker made connections between sentient beings of all kinds. Dyer-Witheford located the tension between the two speakers' articulations not in their accounts of the religious aspect, but between the opposing pulls towards the local and towards the universal.

Aditya Nigam, CSDS, remarked that the religious and the local are crucial in terms of human subjectivities. Claiming the "post-human" and yet oriented towards unmediated "species-being", libertarian, and always changing for the good, seems to parallel Negri's concept of "multitude". Dyer-Witheford answered that the concrete emergence of species-being comes at a concrete historical juncture, when global capital makes possible the interconnection of species. He clarified that he had hence introduced the term "neo-extremism", indicating that the unleashing of species power could also take a completely catastrophic turn.

Rosemary Coombe commented that biology and traditional knowledge could be linked to address the question of religion. She stated that Indigenous people find traditional knowledge debates technical and obtuse; they instead invoke the sacred, which produces silence – outside the

categories of private and public. In this scheme, ecological understanding is linked to the cosmos, whereas religion is a matter of private choice in liberal discourse. We can look at the public domain "not as a matter of freedom, but as an obligation". The concept of species-being takes the category of human rights beyond Western modernity. Butt remarked that "we can't rid universalism of its essentialist traces. How do we find a balance between the universal language we want to use and cultural specificity"? Siva Vaidhyanathan added that we are accustomed to "framing liberty in terms of risks of sacrilege". Even the "individual" has roots in theology. It is obviously possible to go beyond the "disaffected secular understanding" of the individual.

An interjector addressed Krishnaswamy's account of piracy, and asked whether, when the categories of "absolute" piracy and "absolute" property were rejected, it was possible to think of other categories: was it possible to create an "Indigenous" definition of piracy? How does one respond to, or assimilate, the fact that government offices use pirated Microsoft software? Krishnaswamy pointed to Lessig's work on piracy, where he talks of four types of P2P sharing. It was absolutely crucial to balance property rights with people's interests. If we were to transpose this idea to different settings, we could rework the balance.

An interjector stated that software piracy promoted computer literacy, so maybe it was possible to think of piracy as having a "moral" dimension. Trespassing could be given a moral value, in this way; thus, the commons could be associated with ethical imperatives. If there is no piracy, software development and dissemination stagnates. Narendra Pachkede spoke of Indigenous sacred art in Canada, and asked if it was possible to patent religion. Butt replied by giving the example of scientology and First World religious groups, and indicating the parallels between religion and cricket, in terms of mass emotional appeal. According to Dyer-Witheford, institutionalised religion can be seen as a form of patent, with "access restrictions". Siva Vaidhyanathan spoke of how the act of copying in the West had been historically controlled by the Catholic Church, "till Luther's theses were pirated peer-to-peer", so to speak. He asserted that "secret knowledge" has always been a key to religious initiation, technological progress and social control.

John Frow remarked that he agreed with the Left and found it difficult to accept the religious nature of everyday life. "The public domain is opposed to secrecy." He was in favour of the old fashioned, secular, "Enlightenment" nature of the commons. Dyer-Witheford commented that in 1844, Marx's conception of science and technology envisioned it as "the crowning spiritual achievement of man". Thus, this conception undermines the division between rationalism and religion. According to Butt, there is an empirical difference between research on Indigenous religious communities and the consequences of such research. He invoked Coombe's statement about Indigenous groups' invocation of the sacred, which produces a "silence". Does the public domain need to be conceived in an "all or nothing" kind of way, with no room for these silences?

Peter Jaszi returned to the issue of cricket/sports, citing the US struggles with the European model of protection for compiled data, critical to sports scores and a whole cultural industry. What happens when sports scores are privatised? What are the frames of reference in which these issues can be real and meaningful to the life of the masses? Sudhir brought up the Ten Sports case again, explaining two aspects. First, that free speech be treated not just as a negative right, but also as a positive right: not just the right to speak freely, but the right to receive freely. Second, the concept of "culturally valuable" speech. McKenzie Wark asserted that we need to concentrate on movements, and particularity, without dismissing universality. Siva Vaidhyanathan concluded the session by joking that "cricket is a secret language".

The Not-Quite Publics and the Public Domain

Intellectual Properties and the Limits of Human Rights Categories: Claiming Cultural Rights in Neoliberal Environments
Rosemary Coombe, *York University, Toronto*

Benefit-Sharing: The Public at Stake
Cori Hayden, *University of California, Berkeley*

The Construction of Indigenous Authors and Owners in Australia
Jane Anderson, *The Australian Institute for Aboriginal and Torres Strait Islander Studies, Canberra*

Rosemary Coombe stated that the protection of traditional environmental knowledge (TEK) is a complex area of emerging law. She focused on the discourse of rights claims that has emerged with respect to TEK in the Americas, and the challenges it makes to international legal certainties. She pointed to the work of "Foucauldian-inspired theorists", remarking that while there is plenty of controversy over the presumption that Indigenous peoples hold an environmental ethic of conservation or preservation, the question was not whether or not such an assertion is "true", but what political opportunities were afforded by the presumption of this role and positioning by Indigenous people, and what its limits were. The privileged mechanisms of government are characteristic forms of visibility, ways of seeing the social that involve new vocabularies and procedures for the production of truth, as well as characteristic ways of forming various kinds of "juridical personhood": subjects, selves, actors or agents that shape desires, aspirations, interests and beliefs. The global environmental recognition of Indigenous and local communities embodying traditional lifestyles, might thus be considered "an interpellation of culturally objectivised collective subjects ", or "new forms of personhood designed for state ends".

Coombe stated that in order to turn genetic diversity into "information", and aware that they could do so only with the "prior informed consent" of Indigenous/local communities embodying traditional lifestyles, whose knowledge was globally affirmed, states had to locate such communities and endow them with these powers so that the "value" of this knowledge could be appropriately recognised. Thus, persons "must be pushed into thinking about the cultural dimensions of their practices", and involve themselves in the "recording, reification and objectification of their knowledge as forms of data, available for economic exploitation". The rationale of such governance was to allocate the responsibilities for "preservation" to "communities"...who need to be reconstituted as juridical entities capable of engaging in contractual relations.

Thus constituted, communities are obliged to hold their cultures as possessions, and organise and systematise their traditions (in databases and registers), and "ultimately deal with it rationally in an economic calculus". Indigenous communities are invested with new forms of agency and power, as a means of getting them to engage in a larger project of mapping and mining genetic resources for capital accumulation and state development. "Under neoliberalism, the realm of the cultural, in the older anthropological sense of a whole way of life of a people (or community) becomes part of an analytics of global governance", in which NGOs play the role of brokers, mediators and translators for locating and incorporating communities. The "community" is "empowered" to assume responsibility as if it were a "natural" space of pre-political interests, but is actually a key terrain actively produced by state agency, Coombe declared.

Citing the example of Indigenous struggles against the state in the Chiapas region of Mexico, the speaker described how, in response to economic restructuring, new ethnically-diverse "nationalisms" are emerging among the rural poor, that bring together self-declared "autonomous communities" who have organised

around the human rights concept of Indigenous autonomy. Within international human rights discourse, these collectivities have a distinct status. An Indigenous identity has become consolidated in demands for economic and political reforms, not simply in terms of a desire for cultural recognition. New political subjectivities and forms of juridical personhood enable local peoples to challenge neoliberalism and negotiate the terms of their articulation into larger economies. These negotiations are now being conducted from within increasingly international frames of reference, a "modern subject position", using modern rights claims but also insisting upon respect for traditions and "non-market relationships".

Coombe clarified that such communities have become sites for political and cultural mobilisation and sites of resistance to hegemonic globalisations and to the neoliberal "green developmentalism" that otherwise characterises biodiversity politics. Relationships with and representations of local communities have served to legitimate other organisations, state institutions and national and international development agencies. This struggle by modernity's "others" is giving new meanings to sustainable development that "address a history of injustice at modernity's hands, while skilfully deploying human rights vocabularies to express a wider range of human aspiration". The speaker concluded that "it is one of globalisations's many ironies that these contests are being waged in arenas and institutions whose vocabularies and methods have been historically dominated by market norms".

Cori Hayden's presentation drew on her own work on bio-prospecting in Mexico. Her concerns related to an examination of the ways in which a particular notion of "publicness" was actively constructed in the domain of pharmaceutical politics and practice. The speaker described the impact and role of conventions such as the UN Convention on Biological Diversity in solidifying a notion of "community" through a diffuse language of benefits. She asked whether and how the new exigencies of benefit-sharing, and the historical legacies on which these rest, help us to understand the implications of particular public domains as sites of refuge and contested claims. How do current and historical developments in pharmaceutical R&D help us think through notions of the public as the state, the public as a source of contest, the public as the "non-private"? What is the relationship between these different "publics" and the ethics and politics of the public domain in the context of open source/free software and new media?

The speaker remarked that in the context of bio-prospecting there was a "profusion" of idioms of protection and threat", and that in the context of bioethics, it became especially difficult to separate "ethics" from the "law". She said that it was important to be able to make this distinction, however difficult, because ethics and the law were not the same thing. With regard to bio-prospecting and the "ethical appropriation" of community knowledge and resources, there were now all sorts of mechanisms to manage these "asymmetrical economies of participation". These mechanisms were not always, or even often, the categories of law and/or property rights. There was instead the idiom of "benefits", to which the notion of community was crucial. She pointed out that one of the most powerful mechanisms in the reification of the community had not been the law, but ethical conventions and committees of all kinds: UN committees, committees on epidemiological research, etc. This arena of contests signalled towards other idioms alongside the regulatory idiom of property.

Jane Anderson drew from her ongoing work with Indigenous communities in Australia. Her paper looked at the articulation of Indigenous claims to knowledge using the language of property. She stressed how the law created a particular notion of community, which it then invested with rights, leading to an elision of the complex processes through which ownership claims were made. The question then related not to who owned Indigenous knowledge, but rather, "how

Indigenous knowledge came to be known as owned". The speaker pointed out that the use of instruments like law would only lead us to believe in the construction of culture in the framework of national or sovereign interests. "The language of the law co-opts a certain underlying presumption that citizens are a homogenised set of people at least in terms of their behaviour towards a law." However, "the boundaries and exclusions wrapped up in this national frame are made up not just of its political borders, but also of its racial, cultural and linguistic embodiments".

Anderson described Australia's draft Indigenous Communal Moral Rights Bill, which has been posited as a solution to the issue of community ownership. In 2001, the parliament sought to grant protection to cultural interests of Indigenous communities and the cultural works that draw upon communal knowledge, in conjunction with relevant Indigenous arts groups, thus enabling communities to prevent unauthorised and derogatory treatment of works that embody their knowledge. Although moral rights do not provide ownership, they allow for attribution of authorship; the right not to have authorship of a work falsely attributed; and the right of integrity of authorship of a work attributed. However, a precondition is that "only individuals have moral rights", and in addition, unlike the automatic nature of moral rights for individual authors and creators, the draft Bill proposed five formal requirements that must be met before a community could claim Indigenous communal moral rights.

Anderson explained that the presumption of action implicit in the draft Bill is that communities will enter formal agreements. It does not take into account the difficulties of language access, legal translation and legal mediations, and the difficulties in basic service delivery for remote and rural communities, as well as the difficulties in accessing legal advice on copyright matters for communities that are the target of the draft Bill. Examining significant copyright and Aboriginal art cases of the 1980s and 1990s, the speaker concluded that there was an urgent need to highlight the significant role of political advocacy in shaping Indigenous claims of ownership. The differing needs, articulations, political representations and definitions of Indigenous "communities" within Australia "seriously compromise a singular legislative solution to the issue of community rights".

Each presentation reflected on the ways through which the notion of "community" became the fixed locus of property rights, and set the tone of subsequent discussions. Any reference to innovations upon traditional forms of knowledge is cast in terms of perpetual rights for the community/communities through whom such knowledge is claimed to have emerged. Apart from the narrow notions and definitions of community and community rights, the claims of distributive justice via perpetual protection for traditional knowledge seem to be in a tense relationship to IP regimes and legislation. The intense politics of community arise precisely because communities are not static or bounded, but are dynamic and fluid. Communities come together for different purposes; they split, coalesce or develop over time. There is no clear consensus about the markers to be used in identifying a community, or what is entailed in being a member of a community. Any abstract identification of "community" in general bears little resemblance to the practical social reality at a given space and time. Community is always locally and situationally constructed. From this perspective, communities can be imagined and enacted as "spaces of indeterminacy, of becoming". Since the category of "community" is anything but stable, it is a fraught platform upon which to evolve legislation.

Political differences experienced at a local, regional or national level are seldom articulated within national discourses on intellectual property. Indigenous issues relating to IP are conceived as being relatively, and paradoxically, homogenous, i.e., "different" from standard IP issues, but the "same" in their identification as

being Indigenous. The "communal versus individual" binary relegates the diverse dynamics and relationships of control and ownership within Indigenous social and political contexts to the margins; it excludes recognition of Indigenous people as "individual" owners; and at the same time it removes interrogation of the law's own processes of categorisation and identification. The binary may appear to establish a starting point in considering the inclusion of Indigenous interests within the IP discourse, but it actually diverts attention away from the inherent social and cultural complications informing the law. The problem comes to be simplistically presented as one of "clear sociological and ontological otherness".

As images of Indigenous people and communities are constructed in national and international IP forums, so too are Indigenous peoples' needs and expectations. In many cases these are set against the current IP framework. If attention is not paid to local, particular and concrete variables, there remains a danger of replicating ineffective remedies that appear influential and pander to the rhetoric at international levels, but are useless in pragmatic terms because they remain based on imagined communities that bear little resemblance to the actual communities implicated in the IP debate.

Doron Ben-Atar opened the discussion following the presentations with the comment that in Mexico a T-shirt with an image of Marcos, the football player, cost $10, but one with an image of Che Guevara, the famous Bolivian revolutionary, cost $12; an ironic situation "wherein even revolution had become commodified, and could be bought for the appropriate price". He focused on the questions that the panelists had raised about the usefulness of the the category of "communal rights", and noted that the Chiapas revolutionaries in Mexico seemed to be fighting a failing battle, "the outcomes of which, would necessarily be despair". The category of "communal rights" seemed like a possible alternative, but one which attempted to preserve a fictionalised "natural" community. How, then, could one decide who was part of the community and who was not?

Coombe clarified that in the course of her presentation she had made it clear that a dichotomous understanding of tradition and modernity was untenable, and inaccurate. It was part of an Enlightenment understanding of the world which had been rejected. She was instead speaking of the "Indigenisation of modernity". Indigenous people lived in the modern world, and yet inhabited it in different ways. A recognition of different ways of understanding and inhabiting the world did not mean a reification of either "tradition"' or "culture". She added that she was primarily interested in Indigenous ways of understanding the "natural" or "biological" world. The community rights model did not work in many instances because it functioned on a principle of exclusion. It made sense only if you began with an assumption that the rights, which were collectively held, were not rights to "properties"' which could be measured or quantified, but were rights to participation, rights to be consulted. These community rights were the means whereby it was determined who would be included in decision-making in legal regimes.

Coombe added that when the question was posed in this way in international conferences, it bewildered Indigenous peoples. They raised the question of why it was assumed that they had no means of dealing with these questions at the local level. They had exercised community rights for a very long time. All they were asking was that those ways be recognised and be taken into account. Interestingly, this demand for the recognition of rights of the community in the local and global regimes was made in the language of democracy, and worked through a notion of inter-generational equity and inter-gender equity. A reflexive understanding of the issues of gender equity was much more apparent and frontal in these contexts than in corporate bodies whose decisions were accepted by both governments and individuals on an almost daily basis.

Anderson asserted that part of the problem with definitions of community rights as they currently existed was that there was no reflexivity about the community's relationship with land. In Australia, this had caused rifts and conflict within the community over who was deemed to be part of the "community" and who was an "outsider". The legal structure had tried to deal with this problem by defining community in an amorphous, nebulous way: by relying on common markers such as shared customs, beliefs, traditions. This "generalist approach" to how a community defined itself had created conflict over what constituted a shared custom.

Coombe remarked that it would be "possible to globalise a set of answers only when it was possible to globalise a set of questions". In many instances, the communities she was speaking of were fairly well organised, structured and visible as the result of particular histories. In such situations it made sense to speak of community rights because the community itself had a fairly cohesive sense of self. In other situations it would not make any sense, where the community in question had a different history which accounted for diverse ways of negotiating community identity. However, the law rarely, if ever, recognised this diversity and fluctuation. She gave an example that she often used with her students, that of "trade secrets". Something was not stamped as a "trade secret" *a priori*. It was only when relationships broke down, and expectations were confounded, that it was important to identify that which was held in secret, and those who held it. This was not to say that important and significant social relationships which produce value were not nonetheless produced in ongoing ways, on the expectation that should things break down, it would still be possible to identify obligations owed and the content of what was owed. This was the tacit nature, in her understanding, of most social relationships.

Referring to Coombe's earlier research and comparing it to her current presentation, Lawrence Liang raised a question concerning a dialogue between cultural anthropology and ongoing work in the debates around traditional knowledge. He commented that if one looked at work done on cultural appropriation in the realm of trademarks, or subversive readings of Marx, for instance, which Coombe's own work had relied on, one did not find similar accounts in the discussions of the realm of folklore or the culture of the "local". We seemed to be at an impasse in the traditional knowledge debates, which was marked, at least in the official discourse, with the language of "threat" and "protection". He wondered if there was a way of thinking through this "impasse" by using the same terms of cultural politics as we would for the contemporary, for the local.

Anderson remarked that it was interesting that Liang had raised this particular question; in "Australia there was an argument, which had enough takers", asking that Indigenous cultural knowledge should be protected in perpetuity. Indigenous communities therefore seemed to be asking for more property rights, not less, and this flew in the face of public domain arguments which asked for the free knowledge commons. She noted that the discourse of protection in Australia had a very specific history which was marked by controversy and violence, whereby communities which had asked for protection were put into specific terrirtories. It was thus an extremely laden term. The protection argument now seemed to have been turned on its head with communities asking for more protection, and this reversal warranted investigation.

Coombe claimed that Anderson seemed to be making an argument similar to the one made by Michael Brown in his book *Owning Culture*. She cautioned that one would have to be sensitive to the fact that semiotic capacities for self-representation were not equally distributed. This was why the sacrilegious representation of religious minorities was not the same as the appropriation of the trademarks of large corporations. They were different political

activities and thus had different cultural consequences. Formal equalities vis-à-vis appropriation, just like formal equalities vis-à-vis most things, often translated into substantive inequalities on an unequal playing field. According to Coombe, this was the reason why most democracies had legislation in place to regulate "hate speech", because there existed the recognition that certain speech acts could harm a community which suffered from harmful stereotyping in the first instance. In the context of children, this was especially recognised as constituting a psychological harm. Cultures had material consequences, and the voluntary nature of censorship was almost never highlighted. She added that in the sphere of intellectual property, this common sense of decency seemed to be quite foreign to the trademark lawyers.

Shuddhabrata Sengupta, Sarai-CSDS, asserted that he had been very intrigued by the idea of "re-publicisation" in counter-public spheres. One of the ways that one could think about traditional knowledge was that it was formed, or produced, not in isolation within communities but in the intersections between communities. In such a situation, the question of ownership became very fraught, particularly when specialists and knowledge practitioners were transacting knowledge, between different people, in the "liminal spaces" between communities. Could one then think of protocols for counter-public spheres which related not to "ownership" but instead to the "custodianship" of knowledge? He added that the map of communities did not always coincide with the territorial map of the state. If one looked at states as being "paternalistic guardians" of intellectual property within their territories, could one think of other forms that intellectual property might take in these areas?

Coombe concurred that the property model was "inappropriate" for most people. The area of cultural rights had emerged as a significant model in this context where the property model was not appropriate. The cultural rights model did not rely on independent "cultures" which "owned" textual or material things as "property". Instead, it was about dialogue, cultural exchange and the sharing of knowledge. It involved a recognition that cultures were in fact not "autarkic". The debates over environmental knowledge had created an impetus to enable communities to share knowledge across national boundaries. A cross-cultural commons of knowledge was slowly emerging through this sharing. This was not about "preserving" cultures, but reliance on an understanding that certain forms of knowledge were socially contextual and thus needed to be approached with respect for the social contexts within which they arose and existed. This might require modes of building relationships with knowledge which were less contractual, and more in the way of "apprenticeships".

According to Hayden, one of the ironies of the intellectual property debates in the realm of traditional knowledge was that some of the most nuanced understandings of community were coming from ethno-botanists and other scientific communities who were working in an extremely vibrant national culture in Mexico. They recognised that this transaction between knowledge communities was critical to the constitution of the Mexican public sphere. However, what would be the possible destinations of this recognition, from which we might hope for protocols for a counter-public sphere?

Anderson remarked that she had always been fascinated by protocols because they represented a way of negotiating through a situation. They functioned outside the law, they could be formulated to address the specificities of particular situations and communities, and they seemed to work, though they were little more than mutual agreements without any legal or coercive backing. Protocols had a "self-regulatory component". In the context of Australia, they had been very influential in changing people's behaviour towards Indigenous cultural issues and concerns. The problem with protocols, however, was that because they existed in this "amorphous

extra-legal sphere", they were difficult for communities to access. Part of Anderson's work lay in making the protocols "less opaque" to the particular community with which she was involved. The speaker felt that protocols represented an innovative way for communities to work around some of the issues they confronted in their dealing with the law. They held out "a possibility for the community to feel they had some space to not just voice, but also formulate, mechanisms to address their concerns".

Jeebesh Bagchi, Sarai-CSDS, brought up Coombe's observation that it was important to read Rosa Luxemburg's classic text *The Accumulation of Capital* in the light of contemporary debates over traditional knowledge. He asserted that in this text, Luxemberg delineates a relationship between the capitalist mode of commodity production and pre-capitalist (simple) commodity production, which it both creates and destroys. If we were to read the traditional knowledge debates in this light, the appropriation of knowledge was the contest; however, there seemed to be an "innocence" about the destruction, as the relationship between property, dispossession and state seemed to not be part of this picture. It was as if the history of the forests, mines, etc., which were also intensely contested histories of property and dispossession, shared nothing with these histories of production. If we thought of the relationships between forms of commodity production where this production was absorbed, produced, pushed away, and new forms arose within the space being taken over by the capitalist mode of production, how would the speaker read Luxemberg? How would one situate this reading in the current context?

Coombe reminded Bagchi that Hayden had started her presentation on a note of optimism, and that she herself wished to hold onto that. She said she would like to believe that the forces of neoliberal capitalism were not the "totalising juggernaut" that everyone believed them to be. She hoped that it had been possible to establish, however imperfect, "a counter-discourse of ways of being human". She also hoped this discourse was capable of taking on meanings that had been unforeseen, and had worked as a platform for those "whose relationship to a spiritualised natural world had not become totally subsumed by the market", even though they still engaged with markets. She concluded that the Indigenous people's movements demonstrated that different forms of life under contemporary capitalism were indeed possible.

Patents, Public Health and the Public Goods Problem

Introduction

Philippe Cullet, *School of Oriental and African Studies, London*

Access to Medicines, Paragraph 6 of the Doha Declaration on Public Health and Developing Countries in International Treaty Negotiations

Daya Shankar, *Deakin University, Melbourne*

Access to Medicines in the Post-TRIPS Era: Critical Issues

K.M. Gopakumar, *Affordable Medicines Treatment Campaign, Mumbai*

Initiating the session, Philippe Cullet described two aspects of the commodification versus commons debate, with respect to issues of public health: medical patents and human rights. The patent system in public health has often been justified on two grounds. First, that it provides incentives for the private sector; and second, that the patent regime fosters the development of new drugs that have sufficient market potential.

The patent regime also means that very little attention is paid to "orphan diseases"; diseases of the poor, or tropical diseases and others which are not significant from a commercial perspective, to warrant the development of new drugs from the private sector. Moreover, since patents give the patent holder a monopoly, prices are high, thus reducing access to drugs.

The other aspect of the equation is human rights. There is a fundamental or human right to health. The speaker stated that while at the national level the right to property yields to the right to health, at the international level, the right to property, and arguably the right to intellectual property, is on par with the right to health. Hence there is tremendous conflict between these two rights.

Under international law, there is an obligation upon states to progressively realise these rights, which means that these must be applied on an upward curve and nothing should be done to undermine them. Efforts should be made to ensure that more and more people can exercise these rights. This would also mean that the state cannot enter into treaties or other international agreements that would adversely impact the right to health. Significantly, this "progressive realisation" is not measured in terms of the proportion of the general population that has access to medicines, but whether the poorest sections have access to those drugs.

The speaker focused on the Patents Act, 1970, and TRIPS, claiming that the Patents Act introduced "health differentiation". This means that health concerns stand differently from other technology, since health forms part of the basic need of any society. TRIPS, on the other hand, imposes a socially and technologically blind patent system, and does not allow for health differentiation. It does have certain flexibility clauses in Articles 7 and 8, but broadly speaking, is "a step backward".

According to the speaker, the Patents Act has become "progressively more health-insensitive" over the last decade. In 2005, the Patents Act will impose a single regime for all technologies, irrespective of their impact on the right to health. At the same time, because of the experience of other countries, there has been some movement within the WTO to reassert some of the flexibility that is introduced in Articles 7 and 8.

With the imposition of the TRIPS regime on all WTO member states, the technology gap between the countries that had a pharmaceutical industry and those that did not, is growing. The pharmaceutical industry is becoming more concentrated, with fewer players, and larger players.

The relationship between human rights and patents can be looked at from two opposing perspectives. First, the strengthening of the patents regime, and its impact on the realisation of the right to health. Second, the view of the International Covenant on Economic, Social and Cultural Rights. Article 15 of this document states

that everyone has the right to enjoy the benefits of scientific progress and technology. The Covenant also has the provision that everyone has the right to benefit from their intellectual creations.

Both these rights stand on equal footing. As there is no hierarchy, states are obliged to fulfil their commitments to the treaty; hence the rules relating to the right to health must be followed as explicitly as the WTO rules. Given the current dissensions in international law, this conflict between patents and the right to health would be difficult to resolve. Often, "peremptory norms" of international law are applied in the case of dispute resolution. Peremptory norms are the fundamental norms of international law, such as the abolition of slavery, etc. However, human rights have not yet achieved the status of peremptory norms, though it is possible to make the argument that human rights norms take precedence over other matters, including laws relating to patents.

The first presentation, by Daya Shankar, focused on access to medicine in the light of the AIDS pandemic, and the inability of most people in the developing world to access medicines, for various reasons. According to the speaker, the TRIPS agreement was signed by the developing countries under pressure from the developed world. The developing countries did not sign as sovereign nations, in a sense, because they were under threat from the North. During the drafting of the TRIPS agreement, proposals given by the US and the European Community were adopted, and those given by the developing world were largely ignored. For example, the right to export intellectual property that is given by the TRIPS agreement, is a clause benefiting the North. In the US, a domestically-manufactured drug does not require the approval of the Food and Drug Authority (FDA), but a drug that is imported still requires such approval, making the US market impervious to foreign players. Right up till now, no drug has ever been exported from the South to the North, while many drugs from the North have been sold in the South.

The speaker clarified that the Doha Declaration, a declaration of WTO member countries, was largely pushed by the developing world, which granted certain exemptions to the developing countries. The contentious part of the Doha Declaration, Paragraph 6, states that in the case of countries which do not have the ability to manufacture, the access to medicines is to be decided in the future. In response, the developing countries argued that Paragraph 6 falls under Article 30 of the TRIPS agreement. This article grants flexibility to states wishing to bypass the restrictions of the patent regime, but taking into account the legitimate interests of third parties, provided that they do not unreasonably prejudice the patent holder. After the Doha Declaration, however, the US issued circulars stating that the declaration was a political document and was not legally binding. The speaker concluded by stating that in the international arena, the presence of developing countries makes little difference to the formulation of international laws, and that the laws are determined by the North, which undermined what little progress was made by the developing countries.

The next presentation, by N. Gopakumar, described the efforts of the Affordable Medicines Treatment Campaign (AMTC), a group trying to influence the government to review the Patent Amendments that have been brought about in order to comply with the TRIPS regimes. They are also trying to pressure the government into adopting the flexibility provisions that are incorporated in the TRIPS agreement itself. The ordinance to amend the Patents Act reintroduces product patents into India.

Prior to the 1970 Patents Act, there was a product patent regime in India. The 1970 Act introduced process patents into Indian law, and as far as medicines were concerned, product patents were narrow and restricted. The shift from a product patent regime to a process patent regime was preceded by debates that are similar to those of the current IP movement. The 1970 Act is largely a product of the Ayyangar Commission Report,

which recommended that process patents be introduced for medicines and pharmaceuticals. After the 1970 Act, the prices of drugs fell dramatically, and the time between the creation of the finished product and its marketing was reduced to one year. Under the 1970 Act, the patent was given for 7 years. Within 30 years, India was self-sufficient in the production of drugs; but even then, only 30% of the population had access to these.

The current ordinance gives a product patent a validity of 20 years, and this would severely compromise the accessibility to medicines. The speaker gave the example of anti-retroviral (ARV) drugs, the only medicines that can be used to treat AIDS. These drugs were very expensive as long as they were manufactured by Western pharmaceutical companies. However, in 2000, Indian companies started manufacturing generic versions of the drugs, and the prices fell from $10,000 per person per year to $350 per person per year. ARV treatment requires the patient to take three kinds of drugs, twice daily. Since different companies had patents over each of these drugs, a patient had to take several pills a day. Indian companies put all these drugs into one pill, thereby increasing adherence to the required dosage, as well as reducing overall cost.

The speaker described the elements of the TRIPS patents regime, claiming that it introduces compulsory product patents for pharmaceutical and agricultural chemicals, a patent life of 20 years, and other strict conditions for issuance of compulsory licence. India also has obligations under other international covenants and treaties to progressively implement the right to health of its citizens. In addition, people have been given the right to the enjoyment of advances in science and technology.

The question that needs to be asked is whether a country can fulfil its obligations under TRIPS, as well as its obligations under international covenants, simultaneously. The speaker claimed this was possible. According to Articles 7 and 8 of the agreement, intellectual property rights can be regulated for public health. Article 27 does not define the basic criteria for patent production, and hence there is room for manoeuvre with regard to the defining of the patent itself. Article 30 permits the restriction of rights of the patentee for certain purposes, and Article 31, which defines the grounds for granting a compulsory licence, is not exhaustive. The Doha declaration reiterates these flexibilities.

The speaker explained the implementation of the TRIPS agreement in India. The first amendment was in 1999, which introduced exclusive marketing rights. In 2002 an amendment was made to the Patents Act, which allowed for the patenting of microorganisms, increased the duration of a patent to 20 years, added a new chapter for compulsory licencing, allowed for parallel importation with permission from the patentee. The third amendment was introduced in late December 2004.

The ordinance expanded patentability to cover new uses for known drugs. This clearly extends beyond the TRIPS obligation, as the TRIPS agreement does not mention patentability of new uses for known drugs. The ordinance also changes the pre-grant opposition procedure. This opposition is no longer a right that is given, and the grounds on which opposition can be made has also been reduced. Additionally, the procedure with regard to compulsory licences, which is rarely resorted to in India, has been changed and made more cumbersome. The third amendment was an opportunity to undo past mistakes as well as to put certain concrete measures to ensure availability and accessibility of medicines and drugs in the post-product patent era. However, all in all, "the international instruments, local implementation of patent laws and the market logic of pharmaceutical companies has ensured that larger public interest takes a back seat while ensuring profits for the interested players".

In the discussion following these presentation, Avinash Jha, CSDS, inquired about the reasons for

the Patent Ordinance going beyond India's TRIPS obligations and not an option for the flexibilities provided in the TRIPS agreement. The speaker replied that people equate support for the free market with support for strong intellectual property rights. He also stated that the international pharmaceutical companies were very powerful lobbies.

In response to the question as to why domestic companies did not lobby the government, Daya Shankar claimed that there was great inequality between the multinationals and local companies. N. Gopakumar added that the big Indian pharmaceutical companies think of themselves as multinationals, and want to make use of the TRIPS patent regime. Cullet stated that till five years ago, there was a strong domestic lobby, but when it became clear that TRIPS was going to become a reality, the "voices of pragmatism" took over. Lawrence Liang clarified that the debates surrounding the patents ordinance were largely confined to technical and legal spheres; the question was, how to render this debate interdisciplinary. Further, why had these debates failed to generate public discourse, considering the patents ordinance affected the public directly? Cori Hayden responded to this by stating that the generics movement in Mexico concentrated upon "getting drugs into people's bodies", and the public discourse that surrounded the generics movement was directed towards creating new networks to enable greater accessibility to medicines, and also to create a culture of awareness of generic medicine. The issues surrounding "copied" drugs were not concerned so much with patents, but with the drugs' quality.

On the issue of whether Ayurveda or traditional medicine is subject to the patent regime, Cullet said that the government was trying to monopolise all the information for itself. Gopakumar claimed that traditional medicine would not be amenable to patent protection as it would not meet the criteria for patentability. But Ayurvedic drugs can be used at the stage of the pre-grant opposition, to show that these drugs have existed in the public domain, and hence do not fulfill the novelty criteria.

Doron Ben-Atar concluded the session with the comment that the issue of generic drugs in the US was not so much with patents, but with the importation of drugs from Canada. The argument of the drug companies is that the Canadian drugs were not as safe as US drugs. In addition, large American HMOs (health management organisations) supported generic drugs, and there was an interesting dynamic between the drug companies and these HMOs with regard to patents.

Between Anarchy and Oligarchy: The Prospects for Sovereignty and Democracy in a Connected World

Siva Vaidhyanathan, *New York University, New York*

The speaker claimed that efforts to create a world polarised on models of oligarchy and anarchy do not enrich people's lives in meaningful ways. Today, "explicit, panicked calls for a new Western imperialism, based on assumptions of universal benevolence, are countered by a new global anarchistic state of mind, based on opposition to the mainstream forms of globalised centralisation". These kinds of "totalising visions" are non-productive, and destructive. Instead, what is needed is a careful consideration of the democratic potential of the new information ecosystems, and "specific modes of hope and models of optimism" that can push towards the creation of a more just state, opening possibilities "without sacrificing the granularity of the local, the specific and the experimental".

According to Vaidhyanathan, the 1980s and 1990s prophesised the withering of the nation state, with power being wielded instead by transnational institutions and local market players; information communication technologies would collapse distances and lower the price of connections and transactions around the world. In the 1990s we went through a phase dominated by trusting visions of globalised monoculture and consensus, with the "end of history" considered to be the apex of "cultural evolution". It was predicted that technology would replace local identities; a global citizenship would emerge; sovereignty, it seemed, was a thing of the past.

Vaidhyanathan focused upon a triad of "unlikely" political actors that consciously aimed for the erosion of states' sovereignty: "the Washington consensus", "the California ideology" and "the Zapatista rebels". The "soft oligarchy of the Washington consensus" stood for market fundamentalism. Its advocates claimed to support free markets, but in actuality there was nothing "free" about it. Instead, the Washington consensus represented the vested interests of developed nations. It depended on coercion by powerful multilateral institutions such as the World Bank and the World Trade Organisation, and these institutions in turn determined key policies of many developing states. The Washington consensus urged governments to relinquish sovereignty and defer to multilateral trading structures that were free from accountability.

While the Washington consensus offered the erosion of state power in favour of supranational control, the "techno-libertarianism of the California ideology" argued for the spread of cyber-anarchism, enabling the passive erosion of the state's influence on people's lives. This ideology predicted that new technology linking consumers to producers would radically alter global capitalism, and that workers would no longer be bound to factories, firms would outsource much of their work and everyone would eventually be a free agent. Work would be flexible, workers would have effective rights and social needs would be serviced by quick capital. The state would be actively dismantled.

The third party in this unlikely alliance against state sovereignty was the "caffeinated anarchy of the Zapatista swarm". Brewing up from subaltern disgruntled groups, activists from all over the world sought ways to challenge the Washington consensus, and found their cause in the Zapatista movement in Mexico. The Mexican government sought to portray the Zapatistas as violent, rustic thugs. The Zapatistas responded in a technologically sophisticated manner by using decentralised communication techniques, e.g., faxes, short-wave radios and newsletters. The technologies that were part of the armoury of the Washington consensus now served to undermine these very institutions. Eventually, however, the Zapatistas' message spread, and anti-Washington-consensus governments have since been elected in several South American countries. And the anarchists found Seattle, as a node for expressing their political discontent.

Vaidhyanathan asserted that by 2001, however, these three challenges to power of the state lay in shambles, and the state has re-established its preeminence. Since 2001, the world has been viewed by some (George Bush and Osama bin Laden, chiefly) as torn among "civilizations", to use the words of Samuel Huntington. According to this thinker, the world is divided into six stable cultures, and all conflict could be easily explained by a clash of these entities. Thinkers such as Antonio Negri and Michael Hardt, on the other hand, have a vastly different idea of the world. They see the world tending towards two concentrations of energy: "empire" (oligarchic forces of the world comprising of a diffused network of states, corporations and multilateral institutions, which aim to distil power) and the "multitude". While Huntington believes that that culture is fixed and deep, Hardt and Negri argue that culture changes, and that humans are moving towards democracy. They define this movement as "cultural evolution" and "a political concept of love". They use the term "multitude" as a figure for the embodiment of diversity, one that encompasses multiple forms of being/doing, and engaged in the struggle to destroy empire.

Negri and Hardt imagine the proletariat as a heterogeneous web of workers, migrants, social movements, and non-governmental organisations. They see this as, potentially, all the diverse figures of social production, "the living alternative that grows within Empire", the creation of a truly pluralistic democracy for all mankind. The multitude is not "the people", but rather many peoples acting in networked concert. Because of its plurality, its "innumerable internal differences", the multitude contains the genus of true democracy. At the same time, the multitude's ability to communicate and collaborate, often through the very capitalist networks that oppress it, allows it to produce a common body of knowledge and ideas ("the common") that can serve as a platform for democratic resistance to empire.

The multitude's democratic potential thus springs from its heterogeneity and its penchant for dynamic exchange. Negri and Hardt believe these characteristics grow from the very nature of contemporary social life and economic production, which they see resting on two pillars. The first is a new model of labour, which these thinkers describe as "biopolitical production". This implies the particular dynamic of the production of "ideas, images, affects and relationships" in the information economy. These are immaterial rather than material goods. They can spread quickly throughout the world, creating a "commons" that touches on all aspects of social life. The second pillar is the mode of political organisation embraced by the multitude. In place of "centralised forms of revolutionary dictatorship and command", the multitude organises resistance to globalisation through networks, which substitute "collaborative relationships" for hierarchical authority.

Hardt and Negri write: "It is not that networks were not around before, or that the structure of the brain has changed. It is that the network has become a common form that tends to define our ways of understanding the world and acting in it. Most important from our perspective, networks are the form of organisation of the cooperative and communicative relationships dictated by the immaterial paradigm of production. The tendency of this commons form to emerge and exert its hegemony is what defines the period." The authors add, "Network struggle does not rely on discipline: creativity, communication and self-organised cooperation are its primary values."

Vaidhyanathan claimed that Hardt and Negri are "techno-fundamentalists" who believe that technology is a means of establishing democracy. They have a radical definition of democracy: it is "the rule of all by all", an anarchist vision of democracy. They are against any form of sovereignty. One of their central beliefs is that communication technologies can function as tools with which the multitude can challenge empire. The speaker said he disagreed with this formulation.

Citing the use of technology by the re-empowered state to control and "herd" information, he commented that the proliferation of techonology is more akin to "an arms race between empire and the multitude". Given this, he concluded, it is then perhaps not that surprising that "battles over copyright law resemble battles over democracy".

The Persistence of Authorship

Peter Jaszi (with Martha Woodmansee),
Washington College of Law, American University, Washington DC

This paper focused on the 'Critique of Authorship' project that was launched in the early 1990s as a unique contemporary collaboration between academics in the disciplines of literary studies and law. This collaboration had two fundamental premises: that the modern law of copyright was shaped (beginning c. 1800) in an interaction between cultural theoreticians and lawmakers, and that the rhetorical structures that emerged from that conversation continue to be consequential. There now exists a space for a renewal of critical inquiry into the author-centred rhetorics (including the powerful tropes of property and piracy) that dominate contemporary copyright discourse. Jaszi asked whether it was possible to create alternative discursive framings for policy makers and the public, and explored how the rhetorics of authorship persist in the connection with some of the most progressive practices in today's copyright environment, including the movement to open scholarly journals, free software and the digital commons.

The speaker examined what he termed the rise of the "author-effect" and its relationship to intellectual property. The presentation described the details of copyright and also signalled towards the conceptual rift that existed between disciplines such as the law and social sciences. Interestingly, while most intellectual property lawyers would not be conversant with debates around the destabilisation of the figure of the 'author' which has been a staple in literary theory at least since the mid-1960s, it is in the rarefied realms of the law that the most crucial battles over the author are being waged. The Critique of Authorship project is therefore significant in that it attempts bring these two very different spheres into conversation. The speaker discussed the various strategies being employed by

communities today in their attempts to deal with the exponentially expanding realm of copyright. He urged "information practitioners" to make themselves conversant with the limitations and freedoms (such as 'fair use') which existed within copyright legislation. These limitations, while not complicating in any way the traditional definitions of the "user", nonetheless harked to the 'access to knowledge' principle. The presentation also foregrounded an issue which Jaszi asserted is not spoken of enough in intellectual property discussions, i.e., the need to critically evolve metaphors "not simply consumptive in nature", which could be applied to the "user" of information.

According to Jaszi, "as authorship fragments, and as texts become hypertexts, a serious clash of interests bound by the tension between sovereignty and exchange is produced". The future of the Internet is becoming a battle zone. On one side are those who see its potential as a threat to traditional notions of individual proprietorship in information, and who perceive "the vigorous extension" of traditional copyright principles as the solution. On the other side are those who argue that the network environment may become a new cultural commons, "which excessive or premature legal control may stifle". A "sovereignty discourse" is emerging through courtrooms, legislative hearings and debates, the media and international agreements. Those using this discourse are attempting to locate cyberspace within the boundaries of the sovereign state and copyright law. "Protection of author's rights is a rallying cry for stricter control over the Internet"; and protection of legitimate business interests in the new global marketplace is considered more important than "the type of exchange currently engaged in in the Internet". In order to construct new political frameworks, "it is necessary to speak of technology as transformative".

Jaszi defined authorship as "the specific locus of a basic contradiction between public access to and private control over imaginative creations". He asserted that in the US there is "a complete lack of understanding when it comes to collaborative works"; the authorship concept has operated to conceal, rather than to reveal, the actual stakes in the ongoing discussions of literary property; modern copyright doctrine is "incoherent". Authorship has been continually revived and deployed in debates about copyright protection, and its function cannot be characterised as neutral.

Doron Ben-Atar initiated the post-plenary discussion by concurring with Jaszi's observation regarding the reluctance of most academic institutions to recognise online journals as being legitimate repositories of academic work, and the "lurking suspicion" within institutions that online journals, even refereed journals, were somehow less serious than print publications. Publishing one's work in these spaces went against junior faculty when it came to academic promotions, honours, tenure, etc. He expressed a disagreement with the speaker's formulation of the emergence of the figure of the author-genius as being "a negative construct of bourgeois capitalism". Instead, he saw the emergence of the author figure as being a democratic move towards the "demystification" of the producer of a text from the "sanctity of divine revelation". Earlier texts either claimed the legitimacy of divine revelation, or employed classical pseudonyms. He saw the "ascription" of a text to an author as being "a democratic development" in that it humanised the content and allowed the reader to disagree with the author.

Jaszi agreed that this was one possible way of looking at the emergence of the author-figure, but it could still be a development of bourgeois capitalism. Similar "humanist claims" were made on behalf of many aspects of bourgeois capitalism, which was not to say that these claims were necessarily false. The focus of the Critique of Authorship project was, however, not the appropriateness or inappropriateness, or the propriety/impropriety of the originary impulse to authorship, but on the subsequent various "perversions and deployments" of the author-

effect. He did not think, from the standpoint of the project, that this was any reason to "deplore" the entry of the author figure into the discourse, but the various deployments that had occurred since were indeed problematic. While it was certainly true that the emergence of the author allowed for "disagreement" on the part of the reader, it was also true that, conversely, it had permitted a good deal of state control and censorship over expression, control which had not been so easily accomplished in an age of more anonymous publishing.

The speaker briefly explained the underlying framework of the GPL (General Public License), a mechanism which was developed initially for the Open Source Software community to be able to share the results of collaborative work with other software users. The GPL means that members in a collaborative production network, such as the open source community, can use and develop upon the work of other members in the community, with the important caveat that they are contractually bound to ensure that their work will also remain within the community to be developed upon and used by future members. The GPL is an instance of the deployment of authorial control over material to keep open a space for free activity by ensuring that subsequent redeployments of licenced work remains within the terns of an open source licence. Thus, the GPL makes it a little harder for corporate bodies to "exploit the fruits of open source software development".

McKenzie Wark identified what he considered the "motivation" underlying the open source experiment. In his opinion, the GPL "mobilised private vice in the public interest". The individual's vanity and private self-interest produced the public good, in this case, open source software, but not mediated through the commodity form. As a programmer, one wished to be recognised by a community of programmers, by one's peers, and this was the "reward", so to speak. Jaszi acknowledged that the argument that moral interests still played a powerful role was a persuasive one, but he was "unsure" as to whether one could think of moral interests as being connected to the commodity form.

Nick Dyer-Witheford disagreed with Jaszi's categorisation of the Creative Commons experiment as representing a "strategy of exit". He acknowledged that he was persuaded by the the "triadic" categorisation of strategies which Jaszi had delineated, that of "voice", "exit" and "loyalty", but felt that Jaszi had "mischaracterised" the range of options available. The strategy of seeking the public right of access to knowledge could be seen to be one of "voice", and that of the Creative Commons as being one of "exit". He also felt, however, that they both could represent a strategy of voice, and that the strategy of exit was piracy: the assertion that cultural material would be appropriated, and continue to be appropriated, on a scale too large to contain or stop. This was in effect "secession" from a legal regime of intellectual property, and it "misrepresented" a domain of action. The real change in the legal regime would occur with the demonstration of its non-viability, by the massive appropriation of cultural content. Jaszi responded that he did not deny this possibility, but he was not sure if he would revise his characterisation of the voluntary commons: he still held that the voluntary commons represented a strategy of exit, but also clarified he was happy to acknowledge that it was not the only exit strategy.

Regarding Jaszi's reminder that there was a need to critically evolve metaphors that could be applied to the "user" or "consumer" of information, Avinash Jha asked whether the issue was one purely of designation, i.e., of "naming", or whether it actually related to different modes of relating to information. The term "consumer" referred to one form of this relationship, which seemed to be expanding, but there could be other forms. Was it possible to investigate the various ways in which relationships with knowledge and information were formed?

Jaszi replied that he would be reluctant to enter into an exercise which involved creating sub-categories of the myriad relationships forged between users and information. The reality of information practice showed that this relationship was constantly shifting, and eluded easy and fixed categorisation. It would be "dangerous", in his opinion, to attempt to produce fixity. One of the reasons that even progressive intellectual property lawyers in America were reluctant to defend P2P users who shared music files, was precisely because they were not sensitive to this complexity, and saw user information practice as being "purely consumptive", as being simply a question of "trying to get something for free". The relationship between listeners and music was far more complicated than could be captured within the description of "consumers". He was unsure that the project of subdividing the various relationships between information and end-users would be very useful.

Reminding Jaszi that he had urged a greater appreciation and consideration of the limitations such as the 'fair use' clause which were built into existing copyright legislation, an interjector asked about the efficacy of these mechanisms when it came to new technologies such as digital media. He remarked that in the shift to new technology, such as the digital, older limitations like 'fair use' were being steadily eroded as options. In this context, what options were open to individuals if they wished to exercise their rights under 'fair use'? Jaszi replied that this was an extremely important concern. Clearly, in the context of digital technology the 'fair use' clause was not enough in an environment where digital rights were supported by anti-circumvention legislation "which was becoming the *de facto* international norm". The only answer, in his opinion, was to expand the 'access to knowledge' principle so that it became a qualifying principle not just to underlying copyright, but also to para-copyright and anti-circumvention legislation as well.

Jaszi ended by offering the example of the Digital Media Consumer Rights Act, which was currently pending in the US Congress. The legislation aimed specifically to provide "carve-outs" from the Digital Millennium Copyright Act, which paralleled those provided by 'fair use' and other limitations under traditional copyright laws. He remarked that the principle of 'access to knowledge' may or may not find acceptance in the US, but it was clearly one which needed to be at the centre of efforts to affirm access to knowledge at the international level.

The Possession of the Authors

Introduction
Moinak Biswas, *Jadavpur University, Kolkata*

A Tale of Two Books
Sibaji Bandyopadhyay, *Centre for Studies in Social Sciences, Kolkata*

The Textual Scholar in the Electronic Wilderness
Swapan Chakravorty, *Jadavpur University, Kolkata*

Moinak Biswas clarified in his introduction that the panel would focus on the efforts of the textual scholar and the author to "grapple with their own substantiality" on the new terrain of electronic dissemination, and that the panelists would reflect on the elusiveness of the author by locating this figure in the "noetic domain" of textual scholarship. He cited Martha Woodmansee's work on the emergence of the new figure of the author, in 18th-century German literary circles, as an important point of reference in this critical project. Woodmansee showed on the one hand how legal or economic lexicons act as screens for projecting a debate on literature/writing; and on the other, the catalysing role of a relatively obscure English essay by Edward Young, setting off the speculations of Lessing or Fichte. Taking his cue from such work, Mark Rose, in his 1989 essay on the figure of the author as "proprietor", surveyed the parallel development in England, expanding his study of a legal case. Peter Jaszi's own work towards a theory of copyright was similarly oriented.

According to Biswas, the dual conception of the literary work and its author is also paradoxical in "organic" and "transcendental" terms. "This conception shows up its historical contingency once most of the critical gaze is shifted outside of the literary field, once the quarrels between the stationer's company and provincial booksellers in 18th-century England are read as literary meditations, and once John Locke's two treatises on government are read as a truth of Coleridge's *Biographia Literaria*." This moment is consonant with 1968 in authorship studies, Biswas stated, though it also draws its inspiration from other sources, such as Raymond Williams' analysis of cultural designations in his two essays of 1968 and 1969, "Death of the Author" and "What Is An Author?" There is a move from the anti-humanist, modernist apprehension of the textual effect, in the first essay, to a call for "a social-discursive history of individuation, a specific subject-effect". The removal of boundaries between linguistics, literary studies and social sciences was a general symptom of the crisis of the humanities at that time; "the materialist histories of authorship and literary work carried out through the grid of law, property relations, government and print capitalism is a logical extension of the critiques of institutions of modernity".

However, Biswas asserted, "a materialist analysis does not dematerialise the author. To count the author's possessions is also to possess him in a new way, locate him where he was not." Perspectives on authorship in the pre-capitalist era were also influenced by the end of patronage, the imperatives of market relations, the economic-legal redefinition of individual ownership. The stakes were not so much the co-emergence of new property relations with the new authorship, the new idea of the literary work, "but pedagogy and the fashioning of the vernacular itself".

The speaker drew attention to André Gaudreault's work in the field of early cinema, in particular his influential essay "The Infringement of Copyright Laws and its Effects, 1900-06", which discusses two litigations. The first was in 1902 ("everyone was copying everyone else's work at that time"), between the Edison company and a rival, over a single-shot film; the second was between the Biograph company and the Edison company, the latter as defendant, over a multi-shot film which had a narrative. "This is a kind of replay of the idea-expression debate in copyright, taking place in early 20th-century rather than 18th-century

Europe. The judge ruled in favour of the copier/violator. The figure of the author was entirely predicated upon the figure of the narrator."

The speaker added that one might cite the case of Tagore, a writer who embodied a whole historical range of author positions. "A contempory Tagore critic, reflecting on what New Critics used to call the 'intentional fallacy' (the idea that you can actually understand the written work by getting into the mind of the creator/author, an idea attacked by the New Critics), shows how the huge body of Tagore criticism moves on from the figure of the poet as a kind of transcendental enunciator (the value/truth of his work would be determined by this extra-textual status) to the figure of the poet as a more psychologised, private individual. There was a shift of intention, from textual exegesis to biographical interpretation."

Biswas pointed out that the relative autonomy of literary or artistic practices, their own peculiar histories, cannot be ignored in the process of connecting the extra-textual, legal, technical, critical and economic processes. The task of the literary critic, and the critique of authorship project, "does not make the functioning autonomy of the artistic form a fiction", since the artistic process itself takes place within formations which follow their own rules, address their own constituencies, work in specific ways. We tend to forget this, in the process of dissolving the work of writing or image-making "into social fact". There is a resulting inability to distinguish between different orders of constructions, between domains of imagination; and also an inability to make qualitative distinctions within the domain of artistic work.

"Placing the author and the work within a weave of property relations and social constructions of subjectivity is a salutary process of demystification, but it does not claim to exhaust the substance of the written work or the practice of writing," he concluded.

Sibaji Bandopadhyay's presentation touched upon what it meant to "own" a work, when conflict ensued between the writer and the publisher/printer who had acquired the rights to the text. The presentation also explored the construction of the modern Bengali self in the mid-19th century through an examination of primers, of the distinctively gendered nature of this enterprise, and of how authors "curated" readership/social sensibilities.

The speaker asserted that with regard to the words "intellectual", "property" and "rights", we have not yet historically arrived at a position "when we can articulate the three words in their togetherness". He pointed out that the Bengal Renaissance was "the longest lasting Renaissance in the history of man: it is yet to be over!" Central to it was the author-figure/father-figure of modern Bengali culture, Ishwar Chandra Vidyasagar, a "beloved icon" who "represents Bengal's modernity in almost all its facets"; he is associated with the promulgation of the widow remarriage act, the abolition of child marriage, the abolition of polygamy. He is also regarded in many senses as the maker of modern Bengali prose. The common Bengali understanding of Vidyasagar foregrounded two facts: a) he was the son of a poor brahmin; b) his spirit of altruism, he was "compassion personified", and gave of his wealth freely to all in need.

"But people forget to ask how he got this money," Bandyopadhyay explained. "There is so much investment in the term 'culture' in Bengal, that there is not much said in political and economic instances. All energy is invested in the ideological. The word 'culture' is so loved that it has to be made materially insubstantial. It is a 'pure' affect. Hence a cultured Bengali, no matter how fragile, is a repository of values which do not stink of money; is 'transcendental by definition', is 'pure presence'. However, this construction is a product of forgetting; it does not ask the hard material questions in terms of money, market, etc. In my opinion, the word 'culture' can be here replaced with the word 'hypocrisy', which is another term

for 'performance'. But Vidyasagar was an exception to this rule. He knew what money meant, what business meant."

The speaker summed up the textual/material/authorial conflict that was the subject of his presentation. Around 1847, Ishwar Chandra Vidyasagar and Madan Mohan Tarkalangkar, boyhood friends, jointly set up a press called Sanskrityantra in Calcutta. In May 1849, John Drinkwater Bethune established the Calcutta Female School (later known as the Bethune School); the first batch comprised 21 students, and the first two girls to be enrolled were two daughters of Tarkalangkar. In 1849, *Shishushiksha*, a primer written by Tarkalangkar, was published by Sanskrityantra. In 1850, the press brought out the third part of the primer, which was meant for girls. In the same year, for reasons still unclear, the relationship between Tarkalangkar and Vidyasagar became progressively bitter. In 1855, *Barnaporichoy* (Parts 1 and 2), was published by Sanskrityantra. In 1858, Vidyasagar decided to sever all relations with Tarkalangkar. He offered to buy the latter's share of Sanskrityantra. Tarkalangkar agreed, but died soon after, before the deed could be signed. His widow completed the formalities. Vidyasagar became the sole proprietor of Sanskrityantra, as well as of *Shishushiksha* and *Barnaporichoy*.

In 1871, Tarkalangkar's son-in-law, Jogendranath Vidyabhushan, accused Vidyasagar of having usurped the rights of *Shishushiksha*. Vidyasagar immediately countered the charge. In 1884, the 91st edition of *Shishushiksha* (Part 3) was printed. Vidyasagar informed the readers that he had "drastically revised" the text. In 1888, Vidyasagar wrote *Niskritiluv Prayas* (*Attempt at an Exit*), an elaborate self-defence in relation to Jogendranath's accusations. Jogendranath responded by writing *Niskritiluv Prayas Byartho* (*Failed Attempt at an Exit*); this book is now lost. For a long period, *Shishushiksha* was in great demand; there was an equal demand for *Barnaporichoy*. During Vidyasagar's lifetime, about 3.5 million copies of *Barnaporichoy* sold; almost the same figure holds for *Shishushiksha*, but the text itself has faded away. In the domain of primers, *Barnaporichoy* enjoyed, for about a century, a kind of unchallenged monopoly that has no parallel in the history of Bengali primers.

Any copy of Vidyasagar's revision of *Shishshiksha* would state that the text was "authored by Madan Mohan Tarkalangkar and authoritatively revised by Ishwar Chandra Vidyasagar". It was very difficult to determine which part of the text "belonged" to Tarkalangkar and which to Vidyasagar; nor can one ascertain the actual element of overwriting that has gone into the composite text. The two signatures/authorial marks are deeply intertwined, and pose "a textual puzzle". In this case, Bandyopadhyay declared, "property (*sampatti*) has overshowed possessions (*sampat*). The very fact that Vidyasagar owned the book in the material sense of the term enabled and sanctioned his rewriting/overwriting of Tarkalangkar's product."

According to the speaker, there are very serious ideological consequences of this rewriting. The four etymological sources of the word *auctor*, from which the word "author" is derived, connote "to act/perform", "to tie", "to grow", and "authority". Vidyasagar, "with the authority of a man of property, acts/performs upon *Shishushiksha*, unties the text and makes readers grow out of it".

Barnaporichoy marked a new beginning in the sensibility of the Bengali middle class; it was "an invitation to an entry into a new symbolic order", it was "a refashioning" of certain new "Laws of the Father". It was also "a strange book" in that it did not talk about God or a future state, thus drawing the ire of missionaries, who critiqued it. "There was no caste marking: the boys are just 'Gopal', 'Rakhal', etc., no surnames given. The book is about social mobility; it creates a typology of the good (Gopal) and the bad (Rakhal). These are very simple binaries and a very tight, renewed moral economy. Any good boy can deteriorate and any bad boy can improve. The travelling

between the good and bad is open, though the transaction between good and bad is closed."

The speaker claimed that the primer was "an allegory of the social mobility that the colonial state apparatus opened up". The "disenchanted secular, the Law of the Father, has three commandments: speak the truth; never steal; always study. 'Gopal' follows these to the letter, 'Rakhal' flouts these. Rakhal is excommunicated: expelled from school, and when the headmaster complains to the father, the boy is expelled from the home. Under this mark of double expulsion, when the boy goes to the road to beg for food, nobody pays any attention, he receives nothing. There is collusion between school, family and society. In Althusserian terms, there is a shift in the ideological state apparatus, with the bourgeois order, with the primacy of the new couple (family and school) replacing church and family. Althusser would have considered *Barnaporichoy* to be a corroboration of his thesis."

The speaker posited that *Barnaporichoy* frames a new consciousness, while *Shishushiksha* could be read as providing an "unconscious" to the former. Gopal, the good boy in *Barnaporichoy*, is always shown as someone who is fearless, always studying, playing at scheduled hours; i.e., the intellectual. Rakhal is anarchic, the rebel who defies strictures and codes. In *Shishushiksha*, the boys are always frightened: of nature, of the rain, of leaving the house. The protagonists of the two primers are two aspects of the same psyche: *Barnaporichoy* being the official, public one, and *Shishushiksha* the one that is hidden and threatening. "This is a retrospective reading, the primers were not designed on this scheme," the speaker clarified. "The movement from Gopal to Rakhal is representative of the shift in the political imagination of the Bengali middle class; it is the autobiography of this social segment."

He then described *Ingraaji Sahajshikha* (*English Primer*), a later text by Tagore, who hated the Gopal character and liked Rakhal; Tagore commented that "if anything good is to be expected from Bengal, we should depend on the Rakhals and not the Gopals". The primer contained the following sentences: "The boy reads." "Gopal sells." "What is the boy reading?" "What is Gopal selling?" According to the speaker, "Gopal is selling" becomes a kind of "demystification of the studious intellectual, someone oblivious of money and market".

Bandyopadhyay declared that Vidyasagar's primer is also an indication of an optimism where state, civil society and family are fused "in the proper bourgeois sense of the term, a kind of scripting that could only be possible in fully finished capitalist societies. But the text was being produced in a colonial structure, where the state was the colonial state, where civil society was far from civilised, where no colonised subject could enjoy prestige." As a result, family, "as a sphere of affect", was transformed beyond recognition. All social energy would shift towards the family, reordering, restructuring: family would become the site for the articulation of various ideological statements. The family has to undertake the task of defining the future free nation state; the family also becomes the site for the articulation of tradition. And "the figure who has to bear the brunt of tradition, and reproduce/construct tradition, is bound to be a woman".

The speaker stated that if Barnaporichoy was talking about the *nobeen* (young man), and if the Calcutta Bethune School was trying to produce the *nobeena* (young woman). suitable girls for these "suitably made", English-educated boys, at a certain point in Bengal's history, the focus would shift from *nobeena* to *pracheena* (traditional woman), through a reversal of the logic of social "development" in the progress narrative. The traditional woman was not trying to become modern; on the contrary, the modern woman was being made traditional.

Bandyapadhyay quoted from Bethune's speech delivered at the inauguration of the Calcutta Female School: "In a country in which the young men have been subjected to the new English

system of learning for more than 30 years, it was highly probable that the day could not be far distant when an imperative call would be made for extending the benefits of education by which the young men of Bengal had so largely profited, to the other half of its inhabitants. I believe that you, having felt in your own person that elevating influence of education, would before long begin to feel the want of companions, the cultivation of whose taste and intellect might correspond in some degree to your own."

Thus, the *nobeen* would require a *nobeena*, necessitating the framing and construction of a new female subjectivity. But in the 1860 edition of *Shishushiksha*, a book explicitly written for the Calcutta Female School, there is just one lesson featuring girls, two protagonists called Bama and Shyama. These are "made-to-order partners for the English-educated *nobeens,* a duplicate of the boys in every aspect". However, in the 1860 edition, Bama and Shyama become Ram and Shyam; the girls are transformed into boys. "It is difficult to determine who was responsible for this, Tarkalangkar or Vidyasagar. But the question of authorship is not that important. Here the text itself is very revealing," the speaker declared. "The transformation can be read as symptomatic of certain very large events that were to take place later. The developmental story of girls is kept limited. The *nobeenas* must return to the home, must take on the signifiers of the *pracheenas*, new subjects."

The speaker concluded by explaining that when the "Gopals" became "Rakhals" during the nationalist period, the "Rakhals" took great pride in the fact that they were (renouncers); the hagiography of all the nationalist leaders indicates that they gave up property claims in their commitment to the freedom struggle. "When you talk about the formation of the Bengali middle class, the fact of property was elided. When the nationalist leaders talk about wresting rights from the colonial state, property is elided once again. Intellectuals, whatever their financial status, refuse to be associated with money and market. Along with this, the educated, progressive *nobeena* is converted by the nationalists into the traditional *pracheena.* These two components of this theatre of hypocrisy do not enable the analysis of intellectual property rights in any 'intellectual' fashion."

Swapan Chakravorty analysed the historical role of the textual editor, who occupied an ambiguous space between the original author and the text, and followed particular practices in relation to the textual content, in traditional textual criticism as well as in the domain of new technologies such as the Internet. He began by pointing out that John Hemings and Henry Condell, Shakespeare's fellow actors and his first editors, declared in the Folio edition (1623) of his plays that they were preparing the text from "original copies". Humphrey Mosely, who published the Quarto editions of Beaumont and Fletcher's plays in 1647, claimed that the plays now being published by the authors were "original copies". The 17th-century Spanish publisher of Calderón boasted that in his shop you could get many books, including plays, "faithfully corrected" according to the "genuine originals" (*legitimos originales*). "Ideally, this is what most textual editors would have liked to claim: that the text they have produced or determined is an 'original copy'. At the same time, the phrase sums up the frustrating predicament of their trade: the copy is exactly what an original is not supposed to be."

The speaker clarified that for the textual editor, "the original is always already a copy. The paradox dogs the roots of the word 'copy' itself. *Copia*, the Latin word, on the one hand indicates an inexhaustible fecundity of expression. On the other hand, it is ultimately a reproduction of a re-expressible original, a changed version of the same, or that which does not change." By the time Hemings and Condell were putting together their Folio edition of Shakespeare, the English word "copy" had become part of publishing jargon. The copy referred to was the printer's copy from which the text is set; Hemings and Condell were claiming that in their case, the copy happened to be the original.

"All textual editors know that the claim is compromised by the conditions of textual production," Chakravorty declared. "Even if we are not dealing with a dramatic text, all received texts are the products of a series of mediations. Without this founding premise, the textual editor's labours are hard to justify. For the editor's job is to make every link in the chain visible; to reconstruct the historical transmission of the text; to account for every single variant; and to recover for the copy the impossible status of the original. A textual editor produces a pure virgin text that is, ironically, a fully restored one."

The speaker remarked that textual scholarship, especially text editing, tends to rest heavily on the notion of authorship. Without the original subject as producer, the work of restoration and reproduction threatens to become futile. Authorship was tethered to the claims of invention, as evidenced in the gloss that follows the entry *auteur* in Antoine Furetière's *Dictionaire Universel* (1694): an author is "one who has created or produced something"; "he who has not taken his work from another"; authors are "those who are the first inventors of something".

According to Chakravorty, the shift largely follows from the early modern debates on literary imitation, "which worried how an imitation of anterior models could be, at one and the same time, imitation of reality; how the literary text could sustain simultaneous claims of being original and of being new". It would be a mistake to think of this merely as a reflection of the early anxieties of print publishing. "The problem haunted Horace as much as it did Hazlitt. When Jonathan Swift, in *The Battle of the Books*, spoke of the spider who, feeding and engendering on itself, turns all into excrement and venom, he was thinking more of the modern writer's claim to absolute authority than of the quality of Grub Street hacks and their literary efforts." In one of his last essays, titled "On Originality", Hazlitt summed up the dilemma astutely when he defined originality as that which was "both true and new, self-generated image as well as reflection".

The speaker pointed out that for much of the 20th century, textual criticism was an author-centred enterprise: attributing authorship, sorting the shares of contributors in collaborative texts, fixing readings according to the final intentions of the authors. But it is now generally accepted that the author has lost centrality in the digital age. "The consensus seems to be that the death of the author in literary theory has coincided with the deaths of the critical edition; and the electronic editor is necessarily a post-structuralist reader."

Chakravorty quoted the textual scholar Hans Gabler, who wrote in 1993 that "with the eclipse of intention and authority as editorial lodestars, the sharp opposition of error and non-error also wanes, and amendation assumes the nature of an informed and considered suggestion arising of the potentialities of text". Gabler was not referring specifically to electronic editing, but to his synoptic edition of James Joyce's *Ulysses*, an attempt to produce a "virtual" manuscript in which multiple variants and readings are superimposed upon the text like hypertextual links. Gabler tried to do with Joyce what editors in the theoretical avant garde have been trying to do with other authors: disclaiming the privilege of a base text/"copy text", and enabling the reader to navigate between and through alternatives, so that reading can become a "temporal reconstruction" of the text, rather than a "spatially determined sequence".

"Exciting as the new possibilities are for textual scholars and readers, these do not uniformly help the cause, or the visionary notions, of authorship," the speaker declared. He warned against the "ancient error of technological determinism, which conflates the history of a means of cultural production with the historical development of a mode of cultural production". Electronic technology is not predestined to be hostile to the older theories of textual production/textual criticism. Computer aids in the 1960s and '70s were welcomed by textual scholars struggling with obsolete collation machines; and scholars' use of technology also

fortified their image as scientific investigators. It is a mistake to think that earlier textual scholars were unaware about the social construction of authorship, or that they ignored the open continuum of discourse and shut it into "truth boxes", as Walter Ong puts it...Nor was discourse "tethered to a bound cognitive universe", as stated by Clifford Geertz. "The new technology was supposed to expose this notion for what it was: a liberal construct based on property rights."

Chakravorty asserted that we also need to make another distinction, between the hypertext and hyperfiction, i.e., the electronic editing of texts that were produced by means other than machine-readable forms, and the kind of publishing that goes on via the Internet. The digital medium offers textual scholars interactive possibility, as well as "the erasure of erasure". It also questions two premises of the textual trade: a) the ethics of editing, "which are predicated not on the notion of property but on the fact that you are mediating other people's words"; and b) the question of "ownership of/authority over words": i.e., the question of text as intellectual property.

In both cases, the speaker added, "agency will conform to generic compulsions more than technological ones. When a historian edits a treaty or a political document, he will use principles that will not conform to those used by the textual editors...The ontology of reading and the principles of textual editing will not be as important as the protocols encoding the text." Lack of compatibility is not just technical, i.e., users being situated on different digital platforms, but more serious. "All texts are mediations, transactions, between cultures, languages; all texts are translations, in a sense. But here we have to go a step further: we have to change the language of encoding, as software language is not always understood by textual editors."

Chakravorty concluded with a description of the process of editing a political document, citing the case of Don McKenzie, who delivered the presidential address at the Bibliographic Society in London in 1969 under the innocuous title "Two Early Printers of New Zealand". McKenzie spoke on a text called "The Treaty of Waitangi" (the treaty whereby many of the Maoris of New Zealand ceded their rights and authority to the government). "In such a case, when we are dealing with a treaty across the orality/literacy divide, and also a situation where people do not understand the value of signature, or the political implications of words such as 'sovereignty', what is the textual editor's business, what are the ethics?" Chakravorty asked."When we talk about the public domain, the dream of a free flow of information, there is no technological determinism that will guide the future direction; no technology can determine the position of the text or the predicament of the textual scholar. If we do manage to create the ideal public domain, enabling the free flow of information, the textual scholar will have managed to confirm his 'old' values through the 'new' technology."

Shuddhabrata Sengupta opened the discussion that followed, introducing what he saw as the point of mediation between both presentations, through which the idea of the author as an actor seemed to emerge. The production of a text could be viewed as an act which occurred on a stage where the audience were, of course, the addressees of the text, but also previous authors, and others who were waiting in the wings. If the author was an actor, then the relationship between the author and the text was no longer one of ownership, but of transaction. Just as the author was in possession of the text, as something produced through him, the text too was in possession of the author. The author was possessed by and transmitted the text/s that traversed through him, and this was particularly true if one saw this also as the "authoration" of sensibilities. Vidyasagar's *Barnaporichoy* authored a particular sensibility of what it meant to be Bengali. The text itself could be seen as emerging from the transaction of various publics and actors, amongst them Bethune, the ghost of Governor-General Hastings, all of whom in conversation,

through Vidyasagar and Tarklankar, produced the figure of the Bengali. Our understanding of intellectual property then became less a question of ownership and more a question of custodianship.

Chakravorty replied that in a discussion involving the "authoration" of sensibilities, one would also have to pay attention to the circumstances of the construction of colonial modernity and early print culture in Bengal. A "discourse of disinterest" which occurred in Europe due to the division of functions was not available to these early fashioners of Bengal's modernity. Ram Mohan Roy was a printer and a publisher. Vidyasagar was a writer, printer, typeface maker, designer and publisher, so too Tarkalangkar. Modernity therefore entered and operated on a different platform in Bengal, as compared to Europe. It existed in the inescapable context of a colonial culture under a colonial state.

Ravikant Sharma, Sarai-CSDS, read Shibaji's ironic comment on the transformation of the "Gopals" into "Rakhals", with renunciation becoming the marker of this transformation, in the context of a joke within Sarai, where FLOSS (Free/Libre and Open Source Software) was often termed the *khadi* of the software world. *Khadi* was the coarse homespun cloth which Gandhi had popularised during the anti-colonial movement, and which had become symbolic of the movement. *Khadi* harked to images of renunciation, self-sufficiency and the rejection of Western imperialism. Sharma drew parallels between this ethic of renunciation and altruism mobilised through *khadi*, and the contemporary open source movement. He wondered if it was possible to think of metaphors beyond and outside of an ethic of renunciation. Both *khadi* and the open source movement seemed to be inverting given codes and norms, and interesting possibilities opened up when they were considered together in terms of the affective and emotional registers they invoked.

Rana Dasgupta, writer, brought the discussion back to the figure of the author which had been central to this, and the previous, session. He introduced a dissonance in terms through which the author figure had been examined in both sessions, pointing out that both presentations alluded to three historical trajectories: a history of technology, another history of property and economics, and a metaphysics of writing. Dasgupta maintained that the discussions had looked at the author figure as a creation of law and a certain property discourse, in which technology seems to have played an important part. He asked if the idea of the romantic genius was evoked to explain why certain legal codes have arisen, and suggested that the fact of legal studies having fallen behind literary studies in understanding the actual basis of authorship, was an over-simplification of the reasons behind the enduring figure of the author.

Dasgupta also asserted that the idea of the "genius" author was much more complicated than could be encompassed within a discourse of law and property, with different writers invoking and relying on different metaphors to explain their own literary practice. The idea of the "genius" was often invoked in precisely those situations where there was no possibility of creating property. He cited the example of the medieval bards in England who sang in public and insisted on their own genius because they had no other way of publicising their practice. This was true also of early hip hop music, because it could not be converted into property. Instead of looking at this metaphysics of writing within the framework of law, it might be more fruitful to see these as separate histories, and asked if the making of property and creativity owed anything at all to this metaphysics.

Moving to contemporary evaluations of the author, Dasgupta remarked that we rarely, if ever, spoke of "genius" authors anymore, and spoke instead of "best-selling"' authors. We have been completely programmed to think of writing as property now. Some of the confusion around the ostensible blindness of legal discourse to literary theory might be resolved if we approached these

not as elisions, but as separate historical moments.

Bandyopadhyay responded by asking if there was not a perjorative tinge to the term "best-selling" or "best-seller"; did it not imply that the author in question was no writer? Moinak Biswas ended the session with the comment that the project of critiquing the author had not created the figure of the author *ex nihilo*. It was instead looking at a crucial moment of the coming together of various histories into a new articulation. The author was not "invented" but given a new function, which differed from other historical constructions. The critique of authorship did not claim that the author was created through a sleight-of-hand by legal and technical regimes.

Authors, Owners and Appropriators

Debates on Authorship in the Early 20th - Century Hindi World
Avinash Kumar, *Sarai-CSDS*

Culture at Crossroads: Anthropology, Aesthetics and Intellectual Property
Narendra Pachkhede, *Independent Media Artist, Ottawa*

Avinash Kumar's presentation focused on the major debates around authorship and originality (*maulikta*) in early 20th-century Hindi literature. The debates mainly revolved around the idea of the author as a "genius"; of poetry versus prose writing; and the claim to an "original" text vis-à-vis the "inspired", "borrowed" text. The speaker proposed that "as against the European tendency to individual genius and individual authorship", in the context of Hindi "the idea of individual genius gets conflated with national genius" through public discourses of what constitutes national community. The categories of "national genius" and "individual genius" emerge simultaneously at a time when the "Indian nation" is being constituted, and the substantial burden of providing a concept of public good gets intertwined with the idea of the individual genius.

Kumar asserted that there was a desire to create a national Hindi genius vis-à-vis the West because "you have to have a national community and a national literature". At this time, the idea of the individual genius was being imported from the West, and provoking various kinds of disciplinary activities, for instance Shakespearean studies. At the same time, there was a massive English-Hindi translation industry in full operation. Shridhar Pathak's Hindi translation of Oliver Goldsmith's poems "The Hermit" and "The Deserted Village" as *Ekantvasi Yogi* and *Ujar Gaon* were instantly hailed as modern classics by Hindi readerships as well as by English critics in England. Translation was a "two-pronged activity" with regard to what

happened to the original text; it was "transformed" as well as "augmented". Ramchandra Shukla, an important and influential major Hindi professional critic, translated Heckel's *Riddle of the Universe* as *Vishwa Prapanch*, citing many sources, to the extent that the main text was almost in dialogue with them. But translation was also understood as a mode of "creative appropriation", often without acknowledgements.

According to Kumar, medieval texts elicited repeated contestations around definitions of "old" and "new" authorship. For instance, during the colonial period, F.S. Grouse, a civil servant and Collector of Bulandshahr district, insists in the introduction to his translation of the medieval classic *Ramcharitmanas* by Tulsidas, that this text is not merely an "adaptation" of the earlier Sanskrit text by Valmiki, but is a distinct text in itself with different approaches, emphases, elisions, elaborations. Grouse refers to Tulsidas as an "author". Kumar commented that "divinely inspired texts have the tendency to create their own 'authors'. Valmiki and Kalidas have particular histories attached to them as personae: they are 'fallen men' or 'fools', who undergo a process of reformation and are then able to write masterpieces."

The speaker asserted that Bhartendu Harishchandra's well-known essay "*Lekhak aur Nagarilekhak*" (*Writers and Writers in Nagar*i) was the first to perceive and acknowledge *lekhak* as a modern category. Technically, *lekhak* is a clerk/scribe, known in Urdu as a *naqalnavees*, *muharrir,* a copier of official documents in government offices. But Harishchandra's use of the trope is embedded in classical notions of divine power: "Like Vishnu with his *chakra* (discus) and Shiva with his *trishul* (trident) achieve victory over the world, the author blows his victory trumpet with his printing machine." Referring to scholar-philosophers like Johnson and especially Fichte while theorising about German Romanticism and nationalism, Harishchandra once again conflates categories: "The writing power is combined with godly knowledge and supreme inherent talent." He always said, "I made..." or "I produced..." with regard to his work, never "'I wrote..." or "I authored..."; thus, older notions are borrowed to negotiate newer notions.

Kumar pointed out that in the early decades of the 20th century, Hindi prose was still evolving, to the extent that it was common practice for one person to be writing several pieces under different names. This was the case of Mahavir Prasad Dwivedi, a renowned man of letters like Harishchandra, who translated Bacon, James Mill and Spencer on one hand, and on the other, texts from Indian languages, for early editions of *Saraswati*, the legendary journal. These pieces were also "cannibalised" from various sources, depending on the author's command of various languages. In Dwivedi's case, it would be Hindi, Sanskrit, Bengali, Marathi, Urdu, Persian and English. Most contributors to journals were multilingual, and were "influenced" by and accessed a wide range of materials in the original. This often led to allegations of "plagiarism".

Most books in Hindi mentioned the author as the "producer" of the book, the one who "made" the book (*pustak banai*). At the same time, the debate with regard to "originality" was so intense that Dwivedi had to publicly raise the question about the validity of this concept, arguing that after all, no one develops ideas in a cultural, ideological or linguistic vacuum. In 1911-12, Dwivedi published a critical exposition on the theme of "robbery" in Hindi literature, in which he analysed copyright laws. He also declared that prose is a modern form and an efficient vehicle for knowledge transmission; but it is poetry which has to be the repository of the "national genius" as well as the "natural genius", this latter being the quality that separates a great poet from an average one.

Kumar clarified that with the institutionalisation of the literary genius of English civilisation" through various discourses, the idea of "the one and only Shakespeare or Kalidas" took deep root,

provoking Hindi writers to locate their own "Hindi genius", a historicised intellectual being, the national version of such an entity upheld in the West. By then the twin roles of the poet had been established: his apparent ability to "give voice to the civilisational aspirations of the country"; and his ability, through "magical" rhetorical skill, hyperbolic imagery and textual practices, to stir and mobilise the masses for the cause of the nation. The "genius" was canonised as a national figure and his work established as a cultural/literary benchmark. The author was looked upon as both a craftsman and an "inspired" being. Poetry was the one literary form that was prioritised over others. Dwivedi created his "genius" in the figure of the first such Hindi poet of the 20th century, Maithilisharan Gupt (whose epic *Bharat Bharati* became the first bestseller of "high" Hindi). Gupt was literally moulded by Dwivedi's constant patronage, editorial training and by his coercing Gupt to read and emulate Altaf Hussain Hali's Urdu epic *Musaddas* (a history of the rise and fall of Islam).

The debate took further complicated turns. The Hindi poetic "genius" Suryakant Tripathi 'Nirala' was accused of substantially lifting many passages from Tagore, a Bengali "genius". Premchand, another popular Hindi/Urdu "genius", and also the "national" figure of Hindi/Indian literature, whose *Ghaban* is now regarded as a modern classic, was accused of lifting from a "cheap detective English novel". To counter this, Premchand publicly defended his "transcreation", the "creative rendering in his own context". According to Kumar, "the dilemma of prose vs. poetry and the figure of the poet as national genius is inverted by Premchand, who emerged as a major novelist from 1918 onward. His canonisation is due in part to his politics being literary. His 1921 Hindi novel *Premashram* was published with a *khadi* jacket, in the hey-day of the Non-Cooperation Movement. It became an instant bestseller. His 1925 Hindi work *Rangbhoomi*, which had an Urdu precursor titled *Chaughan-e-Hasti* written three years earlier, was seen as a precursor to the National Movement." One of Premchand's Urdu fans wrote a letter putting this on par with Motilal Nehru's "Report", an important political document.

However, at the same time Premchand was facing charges of plagiarism. *Premashram* was seen as a "lift" of Tolstoy's *Resurrection*; *Rangbhoomi* was seen as a "lift" of Thackeray's *Vanity Fair*; *Kaya Kalp* was seen as a "lift" of a novel called *Eternal City*. These charges were made by other Hindi writers, who asked Premchand why he was not being original. Kumar commented that "in the interest of the Hindi national audience, there is a mandate to be original", adding that Premchand's reply was that he had indeed accessed these sources, but used only those parts "which were inscribed on his heart". These became "corrupted", i.e., were changed, and hence he wrote them out in a different way and did not feel the need to acknowledge their origins. He reportedly said, "God-given talent is not enough, you have to have much wider reading." Ironically, within a year of his death, he was cited as the "first" "best" "original" writer in Hindi.

Kumar concluded that that the nationalist literary endeavour had resulted in the creation of a national literary taste. "Wordsworth and the Romantics claimed they were creating new taste, an act which should be the basis for their perpetual copyright. In India, the goal is much larger. There is a desire to assimilate older literary forms, love poetry, courtly poetry, *riti* and *shringar* poetry, etc., into poetry on themes of the national, the community, social reform. The individual writer had to mark out his/her own space within the national."

The next presentation, by Narendra Pachkhede, an independent media artist, curator and theorist, examined the relationship between media and surveillance, linking these with copyright and the legal contestations of the "appropriation" of cultural works. The speaker discussed the work of John Oswald, a Canadian composer who has played an important role in bringing these issues

to public notice. His works have developed a new critical/aesthetic vocabulary altogether. Primarily, he played with the notion of "sampling", and contested the notions of authorship vis-a-vis the recording industry. His 1989 CD *Plunderphonics* visually depicted Michael Jackson as a white woman, and used the beat of Public Enemy and James Brown, among other artistes whose work was easily available in the market. Oswald got his "mixes" sanctioned through radio stations and other public sources. He argued in favour of audio piracy as a right, and also supported multiple authorship. These concepts emerged as key elements in his works. Another significant work, "Express", examined the notion of digital data bases and legislation, and the surveillance and monitoring of refugees and immigrants in Europe.

"Plunderphonics, or Audio Piracy as a Compositional Prerogative" was the title of an essay Oswald presented at a conference in Toronto in 1985. It defines a sampler as "a recording, transforming instrument" that is simultaneously a documenting device and a creative device, "in effect reducing a distinction manifested by copyright". For example, a phonograph in the hands of a hip hop/'scratch' artist who plays a record like an electronic washboard with a phonograph needle as a plectrum, produces sounds which are unique and not reproduced: the record player becomes a musical instrument. Oswald asks to what extent "samplerists" can "borrow from the ingredients of other people's sonic manifestations...Can the sounding materials that inspire composition be sometimes considered compositions themselves?...Are the pre-set sounds in today's sequencers and synthesizers free samples, or the musical property of the manufacturers? Is a timbre any less possessable than a melody?"

In another essay, titled "Creatigality", Oswald declares, "One wrests ownership from existing work only by improving upon it. 'Plunderphonics' is a term I've coined to cover the counter-covert world of converted sound and retrofitted music, where collective melodic memories of the familiar are minced and rehabilitated. A 'plunderphone' is an official but recognisable musical quote. The blatant borrowings of the privateers of sound are a class distinct from common sample pocketing, parroting and tune thievery...Thus, art progresses by innovation and chameleonisation...It's not necessary to tear down the fences of copyright when you can enter by the gate. If you sample, give credit due. And if you have been sampled, consider the credit you've been given."

The Canadian Copyright Act includes a "right of integrity", i.e., states that an author "is entitled to claim ownership and to preserve the integrity of the work by restraining any distortion, mutilation or other modification that is prejudicial to the author's honour or reputation". In terms of authorship and music, Oswald points out that in 1976, the US Copyright Act was revised to protect sound recordings for the first time. Before this, only written music was considered eligible for protection; as Oswald puts it, forms of music "that were not intelligible to the human eye were deemed ineligible". The 1924 Canadian Act, upon which current Canadian copyright law is based, states that copyright "does subsist in records, perforated rolls and other contrivances by means of which sounds may be mechanically reproduced". Today this applies to new electronic contrivances, including digital samplers and computers. According to Oswald, "the dubbing-in-the-privacy-of-your-own-home controversy is actually the tip of a hot iceberg of rudimentary creativity. After decades of being the passive recipients of music in packages, listeners now have the means to assemble their own choices...They are dubbing a variety of sounds from around the world, or at least from the breadth of their record collections, making compilations of a diversity unavailable from the music industry, with its circumscribed stables of artists, and an ever more pervasive policy of only supplying the common denominator."

Oswald claims that "sonic impersonation is quite legal", and that "rhythmatists, timbralists and

mixologists" have rarely been given credit, while among musicologists and orchestra players, "an orderly display of fermatas and hemidemisemiquavers on a page is still often thought indispensable to a definition of music, even though some earnest composers rarely if ever peck these things out any more". He points out that musical language has an extensive repertoire of punctuation devices "but nothing equivalent to literature's (' ') quotation marks...Without a quotation system, well-intentioned correspondences cannot be distinguished from plagiarism and fraud."

Citing Milton, who stated that piracy or plagiarism of a work occur "if it is not bettered by the borrower", and Stravinsky, who said, "A good composer does not imitate; he steals", Oswald clarified that "fair use" and "fair dealing" are respectively the American and Canadian terms for instances in which "appropriation without permission" might be considered legal. The quoting of extracts of music for pedagogical, illustrative and critical purposes has been upheld as legal fair use. "So has borrowing for the purpose of parody." In addition, fair dealing "assumes use which does not interfere with the economic viability of the initial work". In Canada, an artist can claim certain moral rights to a work, including the right to privacy, and the right to protection of "the special significance of sounds peculiar to a particular artist, the uniqueness of which might be harmed by inferior unauthorised recordings which might tend to confuse the public about an artist's abilities". At present, a work can serve as a matrix for independent derivations. Section 17 (2) (b) of the Copyright Act of Canada provides that "an artist who does not retain the copyright in a work may use certain materials used to produce that work to produce a subsequent work, without infringing copyright in the earlier work, if the subsequent work taken as a whole does not repeat the main design of the previous work".

Pachkhede discussed the work of Canadian artist David Rugby, the creator of "motion tracking software", which monitors the movement of visitors to an art gallery. One wall of the space had two projectors, and at the other end, the spectator/visitor to the installation is recorded, and projected onto the screen every 20 minutes. "Activates" are taken, and the result is a "densely social image". The camera tracks its subject according to the data feed in the machines at the gallery, and works with the notion of the identity of the subject. The central argument is that surveillance technology at the installation can provide a "true" reading of an individual.

The speaker also discussed Nancy Nisbet, another Canadian artist who works with the notion of a "distributed identity". In an interactive installation that used radio tags and other identification mechanisms, visitors were allowed to subvert the modes of surveillance, play with the software and "authorise"/create their own identity. Thus, they were able to create a "subversive relationship" with the artwork. This came to be known as "inverse surveillance", the principle that individuals can also surveil and deconstruct/construct identity and authorship by using the same surveillance mechanisms as used by the state, thus subverting it.

Such works were key interventions in the field of culture and the digital commons, and forced the government to review the provisions of copyright legislation in Canada. Contemporary artists such as Oswald, Rugby and Nisbet explore the link between art and technology, and ask if subversion is possible through the interaction of art with the locative media, as well as the mobile media in the digital domain.

In the discussion that followed, various interjectors commented upon the role and responsibility of the artist in the world of the digital commons, when the artist conducts a "subverting" act. The issue of restricting the definition of subversion to what is possible technologically, also came up. Historically, memory has also played an important role in subverting cultural hegemonies. The use of Hindi

words in the writings of expatriates was an appropriate example of "immaterial" means of subversion. Finally, what is subversion, actually? Is there a need to look beyond it? Moinak Biswas pointed out that Indians seem to suffer from "a kind of national anxiety", that is, whatever is produced in India cannot be original, it is always derived somehow, taken from elsewhere. Literature written in European languages is "profound", and that written in Hindi/Bangla is "found". Biswas commented that very often, the impulse behind plagiarism needs to be analysed as much as the mechanisms of plagiarism and the quality of the plagiarised product.

Kumar clarified that he was talking about the author's anxiety with regard to being distinctive. This played out on three levels: national, Hindi (linguistic/regional) and individual. Interjectors commented that the "universal appeal" of Premchand's work is more important than the charges of plagiarism against the author. Kumar pointed out that no "genius" figure was monolithic; Bhartendu Harishchandra, for example, emerged as a hero in the literary imagination, but "the truth is that he was involved in many negotiations", along with being perhaps the first author to acknowledge the individual artist as a valid cultural category, with a right to create work outside the collective/community parameters, as well as outside the discourse of "nation".

Media Empires and the Figure of the Pirate

Introduction
Nitin Govil, *University of Virginia, Charlottesville*

Early Cinema, Heyday of Copying
Jane Gaines, *Duke University, Durham*

Breaks, Flows and Other In-Between Spaces: Rethinking Piracy and Copyright Governance
Shujen Wang, *Emerson College, Boston*

Global Modernity and Movie Piracy
Laikwan Pang, *Chinese University of Hong Kong, Hong Kong*

Introducing the panel, Nitin Govil clarified that it would focus on the "complex overlaps between media piracy and copy culture". Identifying the rubrics of "enumeration" and "embodiment", he began on a metaphorical note, declaring that "Christianity has always been concerned with intellectual property and trade secrets. It is Satan, not Luther, who is Christianity's first media pirate." Satan proclaimed that "the law puts us in everything", according to Govil; "but this is neither Milton's Satan nor Coleridge's celebration of him...The line 'the law puts us in everything' is taken from Al Pacino's scenery-chewing performance as Satan masquerading as a corporate lawyer, no less, in the 1997 film *The Devil's Advocate*". This movie also starred Keanu Reeves as Satan's "unholy progeny"; like Satan, Reeves dares "to crack the mainframe that guards the answers to life, the universe, and everything, in *The Matrix*, which playfully cribs from the Bible and just about every piece of science fiction ever written," Govil declared.

He explained that the Chinese-pirated DVD of *The Matrix Reloaded* is called *Hacker Empire*, and was available in Guang Zhou for the equivalent of Rs 25 a few days after its US theatrical release in 2003. "In claiming that 'the law puts in everything', both Al Pacino and our ordinary

media pirate are on to something." Beyond the statutory sphere, copyright pervades our everyday assumptions about the uses of culture. Copyright conditions ideas of authenticity and originality; it draws the boundary lines that divide the winners from the losers in cultural production; and it "systematises the semiotic affluence of reception practices through the enumeration, governance and disciplining of audiences".

Analysing the terms "embodiment" and "enumeration", Govil asserted that these evoke a question critical to media copyright: the materiality of cultural production. Embodiment evokes those forms in which media work materialises, and enumeration asks in what ways media "can be objectified within a system of rationality". The speaker pointed out that as dialectical categories, embodiment and enumeration help to explain what Peter Jaszi, in his plenary lecture, had called "the persistence of authorship". Embodiment implies a kind of "libidinal" connection between cultural labour and textuality. Enumeration denotes the terms of the individuation of that labour, and the limited right to copy that it carries. As dialectical terms, they also helped to explain the persistence of the figure of the pirate, who is often presented as "a kind of monstrous, unauthorised copy of the author". The figure of the pirate "adorns the Dorian Gray-like portrait that the author keeps in the attic but can never look at."

"The figure of the pirate can shear the romanticism that we associate with the author...I don't think it is going against the grain to suggest that the pro-authorship claims of the early, post-Locke theorists can be extended to the pirate," Govil declared. Just like the author, the pirate "mixes" his labour with the work of the text, "creating the same kinds of libidinal attachment that authorship implies". However, the question of enumeration, specially *re*numeration, is a bit different across the figures of the author and the pirate, "as they are with so many figures that are supposed to battle it out in a kind of bloody, Manichean deathwatch"; the deeply problematic oppositions between the author and the pirate, the sacred and the profane, the cosmopolitan and the indigenous, often play out in terms of violence.

Govil added that he was also thinking of the "violent antinomy" between the citizen and the consumer, which has received its "apotheosis" in the contemporary linkage between IP piracy and terrorism. "The policy technocrats and their enforcement thugs have their knives out for this one...With an evidentiary sleight of hand, combined with the sheer urgency of a venerable but unbending militarism, searching for new targets to acquire, contemporary anti-piracy shares a lot with anti-terror initiatives. We see this most clearly in the logic of preemption, which is supposed to justify millenarian hyperbole and unilateralism in anti-terrorism and digital anti-piracy alike."

The speaker said he preferred to think of enumeration and embodiment not in dialectical terms, but as a set of "didactics", as "itineraries that illustrate and translate the differences and overlaps between media copyright and piracy". These itineraries also suggest the complex nature of the information commodity itself. Information and commoditisation are by no means co-terminus: the commodity itself is a kind of informatic; "Marx knew this, as did Freud, as did McLuhan". Govil explained that there are "terminal commodities, whose social biographies involve only one journey, from production to consumption"; information goods, however, "lead multiple lives" and "embody a kind of transversality, moving across categories of production and reception at a velocity that outpasses the declarative injunction of 'proper use'". These transverse commodities cut across the common intersections and agglomerations of production in use, and create new affiliations.

Moreover, Govil added, we should be wary of this kind of "dromological hype" around the information commodity; and, as Brian Larkin argues, we should work through "noise" and

"breakdown" in the communication process. The transversality of the information commodity helps to explain "the frenzied and slightly breathless" nature of copyright regulation in the area of media exchange. Copyright is caught in a double bind, or, to use the language of film studies, between "two looks". It is either "looking nervously in the rear view mirror, where objects may be larger than they appear; or it is looking ahead, to race forward, to catch up and inevitably crash into the latest forms of media technology". The history of media copyright in the 20th century seems to be the history of these "traffic accidents".

Govil asserted that the state is "hooked" to the idea of enumeration as a kind of anti-piracy tactic. The film commodity also gestures to the limits of political economy as a kind of methodology, and the value of the state as a kind of "statistical imaginary". Hollywood claims losses of $170 million to Chinese DVD piracy every year, part of an overall loss of $3.5 million per year worldwide. In the 1980s, according to the speaker, Hollywood claimed that the Indian film industry owed it over $1 billion in royalties and remake fees alone. We can track the emergence of a number of ways to estimate revenues lost to piracy; and some of these have assumed the status of "orthodoxy" in the media trade. The most common/familiar orthodoxy is that one counterfeith CD, DVD, VHS cassette or Internet download noted by enforcement authorities corresponds to the loss of more than one legally purchased product.

"The neatness of such orthodoxies forms a framework of objectivity for such disputes, and the groundwork for their articulation. In addition, such orthodoxies reproduce the authority of the state in terms of its heavy-handed response. Official statistics are deployed to bolster the power of the state to secure enforcement budgets to manage culture, since it often has control of the agencies designed to enumerate cultural trade," Govil explained. "The applied objectivity of government data obscures the fact that they have been gathered to suit particular interests...The statistical and enumerative imperative central to IP is a legacy of modern governmentality, part of a history that includes 17th-century political arithmetic, the management of populations, and the emergence of systems of rational bookkeeping in early mercantilism."

The speaker also analysed spatiality and temporality as manifested in the enumeration of media piracy. With regard to space, he pointed out that such piracy's relatively negligible production costs resemble the model of small scale manufacture; all it requires is a certain degree of resilient entrepreneurship and technical skill, and minimal infrastructure. This is a crucial factor. "More fully and flexibly than any other form of commodity manufacture, media piracy takes full advantage of its commodities' capacious reproduceability...it is much harder to capture pirates at the moment of production, because manufacture is so dispersed, operations so small and distribution pipelines so informal."

On the other hand, media piracy can be as embedded in localities as are traditional forms of cultural labour. For instance, government reports in the 1980s suggested that trade in pornographic videos relied on teenagers hired by networks of video entrepreneurs, to travel to Nepal, Thailand, Hong Kong and Singapore to purchase pornographic videotapes, which were then smuggled across the Indo-Nepal border involving sea voyages and land routes across Burma and Bangladesh. In the 1990s, piracy might have involved recording a Hollywood film in a theatre in Wisconsin, sending the tapes to China for dubbing and photo enhancement, stamping the disks in Taiwan and then retailing them in Mexico City. Govil added that the persistence of the geographic, even in pirate digital media culture, is also evident in the emergence of P2P file sharing services located in Eastern Europe and the Middle East. The P2P site Earth5 claims to have 550 field agents/employees throughout the region, including from India, Russia, Mexico; it is managed by a mix of Palestinians, Israelis, Jordanians, Russians; it reportedly has financial backing of almost $2 million, and 19 million active online users.

If copyright has generally, and globally, been understood in terms of territoriality, film piracy has long been considered a kind of "spatial pathology": it has even been analogised to cancer. In the 1990s, it was described by the copyright monopolists as an "abnormal byproduct of the otherwise healthy growth of the movie industries...it is seen as a disease that can be cured with the excision and removal of the offending malignancy," Govil added.

He asserted that copyright has always been about time as well, "defining the duration of protection, which, as Peter Jazsi pointed out, is 'approaching the eternal'...In addition, digital rights initiatives have defined the materiality of the work in terms of its nanoseconds of physical materiality in a computer's random access memory. So we have these two temporalities at play. One is the eternal of the corporate media entity as a person; the other is the fleeting moment of a film's materialisation in the computer." When the copyright industries took the VCR manufacturers to court in the mid-1970s, the courts deemed VCR copying as "fair use" because of "time-shifting": the VCR enabled us to tape and watch programmes at a later date. Also, film copyright in particular has been prominent in defining "discrete and staggered exhibition windows". Copyright has tried to protect the distinction of each of the platforms, movie theatre, video rental, paid and then free TV exhibition, that a film inhabits at different points, so that the maximum revenue can be extracted during the time of a film's exhibition on each platform. Copyright has also played a very important role in staggering film releases across international space. "Nowadays, the argument within the industry for simultaneous global release has to do with narrowing the time during which piracy can take root in spaces waiting for legal distribution; today, that window is down to less than one day, including subtitling, etc."

Govil commented that piracy "confounds, and can even invert, the kinds of conventional temporal inequality created by the logic of staggered exhibition". He cited an example from the book *Runaway World* by Anthony Giddens. The author writes that a friend of his was studying village life in remote Central Africa. During her field work, she was invited to a local home for an evening's entertainment. She arrived at the house expecting to witness traditional pastimes of the isolated community. Instead, it turned out to be a viewing of the Hollywood sex thriller/psychodrama *Basic Instinct* on video; the film had not yet been released in London. "What's a modern to do when London and Africa have switched places as the alpha and omega of copyright's temporal regime?" Govil asked. "Media piracy disrupts the temporal time lags of centre and periphery, in their spatial as well as temporal relationship."

The speaker concluded that conventional accounts of film piracy are two-pronged. The first involves tactical and informal transactions at the everyday level of street exchange, through mobile, small scale networks that cater to local populations rooted in the practices of "transformative appropriation...Here, media users engage in what Michel de Certeau famously called 'the daily murmur of silent creativity'". The second trajectory of extralegal IP distribution references large-scale pirate industry reproduction, "rooted in the classical economy of uneven development and comparative advantage." Piracy does not simply shadow the conventional circuits of the authentic commodity through social space. Pirate movements are often "symmetrical, asymmetrical or interdependent" with the circuits of authorised cultural trade, in a "continually shifting realignment" between legal and pirate economies. The demarcation lines between the two were once drawn by state apparatuses. "Now, contemporary practices and the critical appraisal of the relationship between IP and piracy needs to 'fuzzy' the traditional logics of the distinction between legality and its assumed 'other'."

Jane Gaines' presentation focused on the "movement and moment" between 1895 and 1899, "before it was really resolved in the

international motion picture industry whether copyright would apply to the moving image". During the early moment, copying was rampant. Copying involved not only duplicating but also re-making. The moment was "a sort of Wild West of opportunity to reproduce at random and at large". The speaker described the "mythology" surrounding the 1903 film *A Trip to the Moon* by George Méliès, one of the most copied works of that time. When Edison decided he wanted a copy of the film, he sent a spy to try and purchase one, but Méliès refused to sell the print because "at that point ownership meant you could do anything you wanted to do with the print. It was yours." The spy "duped" Méliès into selling a print "for Algeria", to which Méliès, thinking of profit, agreed. Instead, the film was taken to the Edison "duping" lab and used to produce many copies. Ironically, when Edison's brother set up the Star Company in New York, he continually took out ads in *Motion Picture World*, complaining about piracy of his work, his brother's work and the Company's work.

The speaker clarified that one of the first early "remakes" would have been *The Workers Leaving the Factory*, shown at the Salon Indien in Paris. However, her research interest was in tracking the "too, too many copies" of a film titled *The Waterer Watered*, which was a copy of a 1895 French film, *The Gardener,* by Lumiére. Gaines showed a clip of this film, asserting that its remakes were British, American and French; its genealogy was complicated by the fact of the Lumiére company remaking it more than once, with different titles. "The beauty of this technology of course is that, like this moment, it can do with ease what you want it to do, which is to copy. You have a projection system, you have a camera, and a lab, and if you have all of that, you can easily make copies, so why not?" Gaines stated that the original negative ran out because there was such a demand for prints, and the prints themselves could only be shown about 60 times; by then they would be reduced to shreds. The only option then was to re-shoot.

The speaker added that she was not a believer in "firsts", and was also on the warpath against "origins". The project of researching *The Gardener*/*The Waterer Watered* compelled her because it is impossible to determine where the "first" occurs, "if there is a first", with regard to this particular "first comedy", "first fiction film". There were stylistic changes in each version. Depth of field was introduced, as were dramatic elements to the central "plot", a man with a garden hose and a boy; a narrative developed as the remakes were produced. "Do the titles give us an indication of the prints?" the speaker asked, asserting all we have to go upon, when we try to trace this history, are titles and prints in archives all over the world "which have probably been misnamed".

Le Jardinier (1895, Lumiére); *L'Arroseur* (1896 or '97, Lumiére); *Arroseur et Arrosé* (1895-97, Lumiére); *L'Arroseur* (Scéne Comique, 1896, Méliès); *The Gardener and the Bad Boy* (1895, Lumiére), or American remake (Musser); *Bad Boy and the Gardener*/*Garden Scene* (1896, Edison); *Gardener with Hose* or *The Mischievous Boy* (W.H. Smith); *The Bad Boy and the Garden Hose* (1896, J. Stuart Blackton and Albert E. Smith); *L'Arroseur Arrosé* (Comique, 1897-98, Gaumont, Alice Guy-Blache); *L'Arroseur Arrosé* (1897, Léar and Frère Brazile)...The titles of the English remakes did not necessarily correspond to the French titles. Edison's 1896 version had a woman play the bad boy and the gardener, the title being *Bad Woman, Bad Boy*. Textbooks from the 1960s refer to 10 versions, Gaines' research confirmed 16 versions, including a "mystery print" which was shown in New York in 1896 but has no mention of any exhibitor or distributor. We also have *The Practical Joke and the Gardener*, *Watering the Gardener*, *The Sprinkler Sprinkled* (on a contemporary DVD) and *Teasing the Gardener*.

Gaines then raised some "philosophical questions" relating to issues of print duplication. "If you think deeply about it, what is the difference between producing and reproducing? To produce is to reproduce, and to reproduce is to

produce." She stated that this same set of dilemmas apply to issues of piracy in the present moment, "if we talk about copying, imitation, reiteration as negative. Whereas if we think about the possibilities of the machine, the infinite opportunities to produce and reproduce, to make something over and over again, then what we have is a kind of endlessness that matches the notion of the endlessness of copyright." She also pointed to the terminology used in relation to copying: the association was with the notion of "dupe", the connotation of "cheap" and "less than original". A more neutral term such as "contra-type" was preferable. In addition, "this production of the print double by reprinting, or by re-telling/re-shooting, was highly economical. If you couldn't buy the desired film because the producer was unwilling to sell it, you stole it and duped it. If you couldn't steal it, you re-shot the entire film yourself...From the point of view of exhibition, of the demand for products that could not be produced fast enough, one could argue that duplication was innovation."

The speaker concluded that with regard to copying, one could not really use the concept of "version", which says "this is the same thing, only different...This can be said about everything under the sun, this is the same thing as that, only different. To say this is to say little, or nothing, about either thing." Gaines said that she hoped "this delivers a conclusive blow to the masterpiece theory", adding that while she agreed with Jacques Derrida's postulate that all origins are similarly unoriginal, she preferred this rephrased in the words of the archivist Nicholas de Clerk, who once said of archival prints, that "when you look at them it is impossible to make one out from the other because there was never an original in the first place".

Shujen Wang's presentation focused on the global film distribution scenario, as well as emerging markets and post-WTO copyright regulations in China and Taiwan. She emphasised that she did not situate her analysis within the strict binaries of global/local, micro/macro. According to Wang, the world of film piracy distribution falls somewhere between these categories. The global piracy distribution network represents a "leakage" in the established, i.e., legal, distribution networks. Globalisation was not an inevitable condition, but constituted of specific processes embedded in and dependent on multiple linkages and material infrastructure. The speaker reframed the highly complex, uneven and paradoxical developments of global copyright governance, and processes of the reterritorialisation of international treaties and agreements in national spaces. It also raised questions about the intersecting developments of technology, law and state sovereignty.

The speaker situated her work on piracy and the figure of the pirate along the parameters of Actor Network Theory (ANT). This has its origins in studies of the networks of interdependent social practices that constitute work in science and technology. The important fact here is not that humans (actors) and non-humans (actants) are treated symmetrically, but that they are defined relationally as arguments or functors in the network, and not otherwise. An actor is any element which bends space around itself, makes other elements dependent upon itself and translates their will into the language of its own. Common examples of actors include humans, collectivities of humans, texts, graphical representations and technical artefacts. Actors, all of which have interests, try to convince other actors so as to create an alignment of the other actors' interests with their own interests. When this persuasive process becomes effective, it results in the creation of an actor-network, a heterogenous linking of aligned interests.

This leads to an epistemology which rejects the naive positivist view of objects or actors existing in themselves prior to any participation in ecosocial and semiotic networks or interactions (including the interactions by which they are observed, named, etc.). The topology of networks is in general non-local, and semiotic artefacts are often the "boundary objects" that mediate non-

local, scale-breaking interconnections. Both (human) actors and (non-human) actants assume identities according to prevailing strategies of interaction. The most important of these negotiations is "translation", a multi-faceted interaction in which actors construct common definitions and meanings, define representations, and co-opt each other in the pursuit of individual and collective goals. Both actors and actants share the scene in the reconstruction of the network of interactions leading to the stabilisation of the system. ANT assumes the "radical indeterminacy" of the actor. Neither the actor's size, nor its psychological make-up nor the motivations behind its actions are predetermined. ANT can be seen as a systematic way to foreground the infrastructure that is usually left out of the "heroic" accounts of scientific and technological achievements.

Wang asserted that the transnational nature of piracy, particularly the Asian network, has led to changes in global intellectual property rights legislation and enforcement. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is Annex 1C of the Marrakesh Agreement establishing the World Trade Organisation, signed in Marrakesh, Morocco, on 15 April 1994. It means the expansion of global copyright governance into the arena of global trade. It also signals the further intersection of legal, technical and knowledge structural streams. The universalising IP right protection approach that TRIPS establishes is a much less flexible regime than earlier IP governance regimes, reducing the scope of state autonomy in domestic law making. But the fact that it only sets minimum standards with which its members must comply, means that TRIPS depends on state capacities to enforce copyright provisions at the local and regional levels.

Global copyright governance involves the multiplying and overlapping of different networks and sovereignties. With the emergence of this polycentric legal order, a "global versus national" approach is insufficient, as the complex and contradictory processes of global copyright governance go beyond a simple micro/macro dichotomy. Instead of thinking of sovereignty as a single monolithic concept, we need to realise that we now live in a world of multiple, overlapping and contested sovereignties, and we need to understand the state's creative uses of sovereignty in the modern global political economy, particularly in relation to piracy and anti-piracy legislation, Wang stated.

China joined the WTO on 11 December 2001, after a 15-year quest. In addition to becoming a WIPO signatory in 1980, joining the Paris Convention in 1985, the Madrid Convention in 1989, the Berne Convention in 1992, and the Patent Cooperation Treaty in 1994, China also passed the following laws: the Trademark Law in 1982, the Patent Law in 1984, the Copyright Law in 1990, the Software Protection Act in 1991, the Anti-Unfair Competition Law of 1993, and the Rules on the Prohibition of Infringements of Trade Secrets in 1995. Additionally, the amendments to the 1990 copyright law were adopted in October 2001, two months before the formal WTO accession, which brought China into compliance with TRIPS. China also added the Regulations on Computers Software Protection in January 2002, and the Regulations for the Implementation of the Copyright Law of the People's Republic of China that was promulgated in August 2002 and became effective a month later. These changes have been substantial and impressive, especially given the short period of time since China's insertion into the market economy in the late 1970s. The Chinese Copyright Law, for instance, grants rights that are not available in its American counterpart.

The creation of four special economic zones in China in 1980 catalysed a decentering process which produced a profound fissure of the state system and turned the juridical space of sovereignty into mutually dependent relative spaces, Wang clarified. China has a unique status as an entrepreneurial socialist state in which both the central and provincial/local governments find themselves occupying an ambiguous space in

which they operate as both regulators and entrepreneurs, with profound implications for the implementation of IP laws. In addition, because of the imposed nature of TRIPS requirements in many countries (especially developing countries), buying pirated goods can also work as a protest and counter movement to the perceived oppression symbolised by TRIPS provisions. In China, for example, pirated software becomes "patriotic" software, and buying pirated goods becomes nationalistic since it strengthens local industry rather than supporting foreign corporations. Piracy has, in fact, been linked to the growth of the domestic economy.

The speaker commented that circulation and distribution is the key to observing and understanding how Asian piracy networks function. For the markets of China and Taiwan, the cycle of prohibition and subsequent illegality of conducting pirate operations runs simultaneously with the growth of the media markets. The global economy has developed in a highly paradoxical manner, with the increase in national wealth also leading to increase in differences between the rich and the poor. On the one hand, capital is allowed to percolate national boundaries, while labour remains grounded within the contours of the state. In this situation, the pirate "epitomises the tensions between mobility and fixity".

Wang identified three paradoxes that operate within these frames. First, the formal economy is inextricably linked to piracy. After China joined the WTO, piracy also increased. Second, technology fuels the growth of piracy. When Sony dumped VCDs into the Chinese markets after the trans-Atlantic markets became saturated, it started a revolution in the Chinese piracy networks and drastically altered the existing hardware-software dynamics. Third, the formal market economy and pirate market economy develop in parallel, step for step. In order for piracy to grow, it has to carve out an in-between space for its operations, something which is not fully developed but developing. For instance, a local Chinese writer has created his own version of Harry Potter.

Wang stated that emerging Asian markets (China, Taiwan, Hong Kong and India) are "safe havens" for pirates because the regulatory mechanisms are still in process. Powerful associations like the MPAA (Motion Picture Association of America) tend to attribute "national characteristics" to pirates: for instance, the Taiwanese are the most "creative", while the Koreans are "a nation of downloaders". According to the speaker, this is "not without its share of truth", because the Taiwanese were the first to use juveniles to distribute pirated copies; and over 65% of the Koreans using broadband technology also downloaded movies. She concluded that issues of piracy have highlighted the central, indispensable and highly intricate roles the state plays in negotiating on the one hand with international trade regimes and transnational corporations, and on the other hand with piracy networks. The loci of power are reconceptualised, and "pirate" processes and mechanisms of reterritorialisation have not only redefined boundaries, but also "transformed, deformed and even reversed the global flow of products, images and ideas".

Laikwan Pang's presentation sought to disrupt the term "copying". Her intent was to bring together two different categories of copying in cinema, that were parallel but not identical to the idea-expression dichotomy that scholars of copyright are familiar with: 1) plagiarism, or inference copying, i.e., the copying of themes, styles, ideas, characters and plots; and 2) piracy, or direct product copying, through digital media. Regarding the first category, specific textual details are presented as evidence, while regarding the second category, media studies, legal studies and sociology focused on the production, distribution and circulation of curated works as final products, instead of the original texts. Inference studies focus on micro-level executions, where representations are put together, while direct product studies focus on larger political and social analysis.

The speaker asserted that we have no choice but to take multidisciplinary approaches to the study of intellectual property. The two types of copying, inference and direct product, contribute to different systems and are subject to them; they need to be studied with reference to each other in order for the larger complexities to be understood. They have to be seen in the light of the relationship between "global modernity", a "singular form", and "alternative modernities", which are pluralistic. Marxist scholars have discussed this as part of the general capitalist reality. Contemporary discussions of copyright confirm the single character of global modernity. Copyright has a "very strong desire to level out all cultural differences" in order to work effectively. Pang brought up the issue of "unidirectional global control between global copyright owners and users". However, in this monopolistic schema, "there are many undercurrents which are extremely intractable and diffusing".

According to Pang, there are two ways of understanding copying: the thesis of "global modernity"; and culture, which is a "diffusing counter-current" to global modernity. "I would argue that the acts of becoming similar always imply the acts of coming to terms with differences," she declared. "Anthropologists argue that mimesis helps people discover kinship, otherness, affirming hierarchies. Mimesis is the unique faculty of human beings to connect to others. This concept has always attracted contemporary theorists interested in language. Post-structuralist scholars maintain that mimesis, particularly in the capacity of language, is a core dimension of humanity, which produces differences through the painstaking but mostly futile effort to become the same. The identity-difference dynamic is also the core of discussions regarding commodity culture and globalisation...Adorno raised the classic model of the culture industry, which is composed of the dynamic interaction between pseudo-individualisation and standardisation.

Globalisation adds the dimension of cultural difference to the culture industry's product diversification. It is true that much of current global culture has become homogenised. But we should not equate global penetrations of Western culture with the auto-eviscerations of local particularities."

Pang commented that the word "glocalisation" suggests that just as the global modifies the local, local practices have a determining impact on the global. Glocalisation "deterritorialises" by "making people's lives more translocal", so that "the fluidity of global modernity is dialectically constructed by the presence of discrete cultural identities". She pointed out two common global corporate strategies. First: to tailor selected commodities to local markets by changing their packaging or content; for instance, HSBC's claim, "We are the world's local bank." Second: to package some products in "colourful exotic flavours for the consumption of the entire world"; for instance, Hollywood's appropriation of Chinese Kung Fu. "The dynamic interaction of pseudo-individualisation and standardisation therefore is also performed on the level of cultural difference and similarities within the recent globalisation trend. Cultural differences are both dissolved and reinforced in the global modifications of culture."

Focusing specifically on movie piracy, Pang remarked that this phenomenon apparently produces similarity, rather than difference. "Movie piracy subverts the dominant culture industry not only in terms of profits." Such piracy is not a single direct cloning of the original product, because the copies sometimes "reveal ideological networks and fantasies" constituting the original commodity." The speaker described how a pirated DVD of the popular American movie *Kill Bill,* that she bought in an obscure shopping mall in Hong Kong, reveals the working of Hollywood transnationalist politics. "The visual quality is satisfying. The easy availability indicates that it is taken from a copy leaked out probably during the post-production process."

The good audio and visual quality ensure a resemblance to the original, but the mark of difference is in the "ridiculous" subtitling. "For successful international marketing, local distributors of Hollywood films need good advertising and subtitling. Pirates try to invest as little as possible in these two duties, though they have to. For promotion, they rely on official distributors, but they have to work on dubbing/subtitling themselves. Screener copies which service the master versions do not provide subtitles, which are the most obviously pirated component on the product. These, more than anything else, demonstrate how people outside the US understand Hollywood films."

Pang explained that "predictably", the quality of translation is very low; sometimes a film is translated/subtitled in less than a day. The results are "incredible", and at times "subvert the film's meaning completely" because they are opposite to the actual dialogue. The speaker distributed a sheet with an example of such translation from the pirated version of *Kill Bill*, and compared it to the original. "The translator listens and writes down the English and then translates what has been written. The translator has to rely on his/her prior knowledge of the US, and it is a Chinese reading of American cultural terrain." Sometimes this can render the story line incomprehensible, or produce hilarious semiotic ruptures in narrative trajectory or exposition of character, as for instance when "rationality" is translated as "nationality". She concluded that pirated movies not only produced difference via these local modes, but also created a viewing experience that was very different from the experience of viewing the original.

Nitin Govil opened the discussion following the presentations. He said his own research in this field indicated that Chinese students were paid the equivalent of $30 to "very quickly" translate films. He said he did not necessarily condemn mistranslation because this is what has actually fuelled the proliferation and sale of these VCDs, "just because they're so funny and so interesting". Whether intentional or not, mistranslations also could sometimes work "in a beautiful way". He added that the "noise" in the communication system has created the proliferation of the pirate distribution apparatus, which is both "interesting" and "welcome".

Ravi Vasudevan, Sarai-CSDS, asked Jane Gaines about the "possible philosophical ramifications" of pre-copyright in early cinema. He asserted that in terms of the apparatus in film, there is not really a distinction between the original and the copy, to produce and reproduce. But in contemporary cinema, this capacity is built into the film apparatus. Technological development has enabled distinctions. There are also specific and linked business and entrepreneur modes in operation. In the pre-copyright era, there was a demand for films; through copying, entrepreneurs could go into new territories, create them, set up companies, fill theatres. Today, new copying technologies have enabled the creation of the commons and thus problematised the grounds of property. Since copies are cheaply and easily available, the commons becomes possible. These various accounts "mobilise a shifting set of logics". In the case of Taiwan, there is the possibility of the public being animated by national sentiment vis-à-vis the act of copying. Another account is that copying is not "guerrilla activity", it is just daily economic activity, with the product fitting well into local cultures of consumption, through translation. A third account was that the state could "massively and perfectly enforce regimes of copyright, and then turn a blind eye to the actual practices, which are facilitating economic growth and flows".

Vasudevan also asked about the place of Hollywood in these accounts: is it affected badly, leading to the development of paranoia scenarios with regard to copying? Are these valid, since Hollywood is the point of origin; it is the product being mimicked, translated. In addition, was there any other kind of productive moment that facilitated the creation of the commons? Game culture, the interactive domain, "may be one way

to repave the theoretical ground upon which this is understood"; for instance, with the "refashioning" of the spaghetti Western, Hollywood "may be a recipient of something to which it feels it has an authentic right".

Gaines replied that one of the issues that spans this cinema century is the problem of generation. "We may not subscribe to the notion of the 'original', but we really don't like a bad copy...A version far removed from the original is a problem for the cinephile. I suspect that copiers and contemporary dupers are cinephiles too. So when we scrutinise image quality, we have wonder as to how much is being excused by people buying the 65-cent versions. The question of print quality should segue into the question of the interactive and the degree to which the game companies have allowed a kind of feedback—-but Hollywood is not looking to Taiwan for stories. Today, scripts are created by professional studio writers. Looking at this in terms of pirate culture, where is the most input? In terms of the commons, where is the story origination? Would you argue that in copies/versions far removed from the original, there is an attempt to take over the story?"

Pang agreed that pirate culture did shape a new cinephilia. Prints are cheap, easily available, "you buy it, use it, you don't store it in a nice cabinet like an American DVD worth $30. The prints are cheap so there is less resistance to sharing...We are well educated, we know conceptually that piracy is against the laws of copyright, authorship, property, etc. But we participate in this anyway." Wang commented that the act of translation was different from network copying, "where you don't have any kind of distortion". Translation was, in fact, an "active/productive moment" in actor network theory. She explained that in 2002 Taiwan had experienced an organic college student/campus movement in the direction of free software, with the end result that the government shifted its use of Microsoft to Linux. This "really backfired later", but it was a small victory, and today people were continuing the fight.

Brian Larkin commented that we often think there is improvement in quality as we move from technology to technology, but at the same time we tolerate "incredible lapses in quality". In situational terms, piracy gives convenience, hence the downgrade in quality is endured; plus, pirated items are cheap. With regard to translation, he described the experience of watching Hong Kong films dubbed into English. "The voices of all the characters are done by the same person, very quickly." Doron Ben-Atar remarked that piracy also changed content according to audience tastes, cultural imperatives and governmental norms, particularly in the representation of history. Pang stated that Hollywood seemed to want to have "a single identity that is circulated globally". According to John Frow, "we need to consider not only the moral questions but also the symbiosis between the pirate economy and the official production economy. "The black economy is the obverse of the white economy...In the case of the music industry, piracy actually drives up the demand for the official products. Piracy is beneficial, in that it builds up a culture of cinephilia. But we need to understand it in systemic terms."

Nitin Govil identified a symbiotic relationship between Hollywood's "frenetic" take on piracy and pirate economies. "Hollywood actually recognises that its anti-piracy initiatives in China will not work. There is absolutely no way, given the price differential and rapid availability of pirated products, and the various kinds of cultures of anticipation that are built up around the pirate economy." Govil claimed that Hollywood has used the piracy issue, and the moral rhetoric that comes with it, "to negotiate for other things". These include doubling the numbers of legitimate imports, and putting restrictions on China's inclusion in the WTO. Hollywood has also argued for foreign investment in multiplex construction in South-East Asia. "Copyright is the rock Hollywood bashes everyone over the head with, but also a rock under which its more achievable goals can hide and emerge."

Wang's concluding remark was that piracy was clearly cultivating a new generation of cinephiles and Hollywood fans, "but we still need to differentiate between music/film piracy and software piracy, and its relationship to the issue of national development". She described how a Chinese professor had told her that he could only teach statistics through the use of pirated software; and how an underground gay filmmaker in China told her that it was only possible to distribute his products through piracy networks. The benefit was to the local economy, to niche circuits, and also to the licit outlets that surreptitiously and simultaneously distributed pirate copies.

Culture beyond Property

Tales of the Commons
Armin Medosch, *Independent Curator, London*

Information Wants to Be Free (But Is Everywhere in Chains)
McKenzie Wark, *New School University, New York*

Excessive, Dense, Speedy, Complex, Empty...But Humane
Hou Hanru, *Independent Curator, Paris*

Armin Medosch described "<Kingdom of Piracy>" as an online open workspace that explores piracy as the Net's ultimate art form. The project includes links, objects, ideas, software, commissioned artists' projects, critical writing and online streaming media events. Jointly curated by Medosch, Shu Lea Cheang and Yukiko Shikata, <KOP> is intended to remain an open-ended digital exhibition; artists and authors will remain sole copyright authors of their works. Medosch stated that <KOP> (http://kop.adac.com.tv) was commissioned by the Acer Digital Art Centre in Taiwan for ArtFuture, launched in December 2001 and presented at the Museum of Contemporary Art in Taipei. In April 2002, the leadership and direction of ADAC changed. At about the same time, a major anti-piracy initiative was launched in Taiwan. Then the original sponsor demanded editorial rights and a name change. The project curators rejected this, and sought ways of preserving the project as both a Taiwanese initiative and an international online art project. The site is an active public sphere for global file sharing, de/scrambling and digital culture jamming. Commissioned works are engaged in artistic acts of "piracy" as a strategy for intellectual discourse and poetic intervention, but not as any endorsement of piracy as a business model.

<KOP> is based on the curators' conviction that in the emergent information, "or immaterial economy, intellectual property (IP) – copyrighted content and patented ideas – constitutes the

central resource of many of its biggest industries, from IT to entertainment, pharmaceuticals and biotech. The definition of IP rights in the digital domain has emerged as one of the central struggles to shape the culture of the information society. The rigid enforcement of patents, copyright, anti-piracy laws, is resisted by a loose but growing alliance of scientists, researchers, free software and open source developers, artists, lawyers and teachers." The purpose of <KOP> is to "consider the law and order provisions surrounding intellectual property in the context of geographical and cultural borders, and to examine the challenges presented to them by artists and cultural producers worldwide".

According to Medosch, the concept of IP rights has no history in Asia. "The recent show destruction of millions of pirated CDs and DVDs in China, a preliminary to the country's entry into the WTO, does not change the fact that much of the Asian continent is still operating completely on its own terms. The burst bubble of dot-commerce in the early 21st century has plunged Taiwan and Asia's electronic supply industries into recession, keeping the divide between Western and Eastern economies as wide as ever. <KOP> will consider this digital divide, and its sustaining strategies, from a global perspective. Theorist Arthur Kroker speculated in 1994 about 'digital abundance', imagining Taiwan as a tetra-gigabyte data heaven, 'the largest data storage dump in the virtual world'. <KOP> envisions a virtual free state outside of geography, time, corporate power and sovereignty; a decentralised, fragmented, immanent entity in which everyone can be an autonomous agent."

Medosch asserted that the Kingdom of Piracy is everywhere: "on the fringes and and in the mainstream high-tech economies, from Asia to aastern Europe to the date havens of Sealand and hackers' garages in Silicon Valley. The digital commons is bathing in millions of MP3s and an endless supply of wares. Codes for appropriation, cut-and-paste, replication, sampling and remixing have long been established as artistic practice. <KOP> challenges artists, writers and practitioners to use these techniques to question, contribute to, analyse and otherwise address this growing kingdom. It also asks them to become intimately involved in the processes of the Kingdom itself, a place in which all productions are part of an innately collaborative, derivative and intimately interconnected environment of intellectual 'properties'...<KOP> invites allied crews of crackers and artists to plug into the supply lines of digital abundance."

The speaker added that in 2005, <KOP> was embarking on "a commons R&D", which was seeking to "highlight the existence of different types of commons which are culturally and historically situated. Each commons has its own story..." <KOP>'s intention was to collect a number of such stories, "the tales of the commons. Each tale is an example of a sustainable commons that belies the pessimism of the 'tragedy of the commons'. What are the necessary sets of conditions that allow a commons to form? Besides environmental and contextual conditions, what interests us most are the social forms of organisation. How do communities self-organise to define the rules of usage of the commons? Are there any rules in self-organisation? Or, to reverse the question, does the commons facilitate self-organisation?" Each "tale" will be articulated, questioned and analysed by an interdisciplinary and transcultural research collective. This "telling" about the commons will bring together the supposedly "neutral" technical online space with stories rooted in specific cultures, spaces and political economies.

In his essay "Piratology", written in the context of <KOP>, Medosch has urged users to "dive" into "the deep seas of open code and free culture". People working to create a digital commons are, through their combined effort, "changing the conditions for creation, innovation and cultural production, contributing to openness and freedom. They don't do so by criticising the existing world or mainstream institutions and opinions, and they do not draw their energy or

their legitimation from any kind of opposition." A small but significant number of artists are no longer concerned with image production or self-expression. They have joined forces with coders, either by starting to code themselves, or by working closely with programmers. These artists/coders are now at the heart of a cultural struggle, not because the product of their labour is art but because the code they produce is an expression of culture in its deepest sense. "They carry forward the cultural politics of code by supporting the foundations for the preservation and renewal of culture. By creating digital tools that can be used, changed, redistributed and appropriated by everyone for free, the artists/coders liberate culture from the grip of the culture industries". Through such efforts, Medosch concludes, "artificially created scarcity, prohibitous laws and privatised networks are not attacked head-on, but are rendered irrelevant by the existence of viable alternatives".

McKenzie Wark began his presentation by describing information as "strange" and "theologically subtle", and claimed that its "peculiar ontological property" is that it is never immaterial. It cannot not be embodied; it has no existence outside of the material. Yet, information's relation to the material is "radically contingent". The coming of the digital is the realisation, in every sense of the word, of the "arbitrary" relation between information and its materiality. Information can escape from its scarcity, in the digital age: "this is its unique promise, now fully realisable..."

According to the speaker, information is what economists call a "non-rivalrous resource". It introduces into the world new kinds of property relations in the legal sense: what we call intellectual property. This grew out of, but is distinct from, patents, copyrights and trademarks; IP is the "tendency to turn these socially negotiable rights into private property rights". This is the core tension: the contradiction between the newly realised potential of information to escape from scarcity, and its potential to being restricted within the limits that scarcity and the commodity would impose. The speaker clarified that as a Marxist he was interested in law "as a terrain where successive ruling class interests manage the transition from one mode of production to another". He suggested that it was useful to conceive of three stages of commodity production, "each hinging on a more abstract construction of the private property form". First, the agricultural; second, the industrial (antagonistic to the first); and third, information capitalism or "capitalism globalised" (antagonistic to the first and second). This was a new historical stage of commodity production, based on transforming information into a private property right. Intellectual property emerges as "a new and more abstract form of property, with which to control the production process".

This phenomenon of "post capitalism", however, has not abolished the question of class. The privatisation of information gives rise to a new class relation. Intellectual property produces a "hacker class", the class of those who produce new information; they belong to all disciplines and work in all genres. "It doesn't matter what place one occupies in the intellectual division of labour when all of what we produce is rendered equivalent by the regime of intellectual property," the speaker asserted. He then described what he termed the "vectoralist class" which "owns the means of realising the value of intellectual property". This includes the "culture industries", the drug companies, agribusiness and any line of business "dominated by the management of a portfolio of trademarks, patents and copyrights". We can account for the obsession with enforcing IP law in class terms: it is in the interests of an emerging ruling class.

Wark asked how we could account for the tension between the increasingly vigorous attempts to outlaw the free sharing of information, and the persistence of file sharing and piracy. The "trespassing instinct" has always been present; but now "it may have found an ally in the digital means for reproducing information, so that one's

possession of it can be the possession of all. The technicity that makes possible the abstraction of information from its material substrate is not only calling into being something that can be captured by regimes of economic value or legal jurisdiction, but something that can escape them."

The speaker asserted that the hacker, like the worker or the farmer, has to sell the product of his/her labour to those who own the means of realising its value. In terms of the capitalist scheme of the global division of labour, manufacturing becomes the specialty of the underdeveloped world; the overdeveloped world "manages the brands, husbands the patents and enforces the copyrights". But the vectoral "scrambles the once relatively homogenous economic spaces within various nation states. One can find the underdeveloped world now in Mississippi, and the overdeveloped world in Bangalore." Wark claimed that the paradox of our times is that both the privatisation of information and the expansion of an informal commons are happening simultaneously. But the vectoralist position, with its "brittle monopolies", is fragile, as it runs counter to the ontological properties of information itself, and can only protect its interests through legal coercion; and "the very means of producing and reproducing information that it creates are the forces of its undoing".

He then offered an alternative model to both the absolute commodification of information and its piracy: the gift economy. "As John Frow has argued, rather than the gift being a pure, ideal and harmonious state existing prior to commodity, it is the commodity's necessary double." But the coming of the digital opens up a new possibility for the gift to "distance itself from the commodity". Through the Internet, one can create "the abstract gift relation". While the traditional gift always involved a giver and a receiver who are known to each other, who oblige each other, the abstract gift "involves no such particular obligation. When one gives information within the networks, the obligation one invokes is something common, not something particular."

This mode of exchange points towards a "hacker ethics" as well as a "hacker politics". These involve "participating in, and attempting to create, both technically and culturally, abstract gift relations within which information can not only want to be free, but can become free". The speaker concluded by reiterating what Marx claimed in the Communist Manifesto: the forces for change in any social movement are those who ask "the property question".

Hou Hanru's presentation described a "post-planning urban world" in which the city is "an ever-growing collage of diverse forms and strategies of construction and reorganisation influenced by exciting new inventions and endless everyday crises". The current revolution in digital technology is further accelerating this tendency, bringing all such spaces together in a global network, "while material facts and immaterial images" are merging to make every place a complex and stimulating environment". Morevoer, cities are zones of "urgency" and are always ahead of the plans; urban realities are always "posterior events", the results of delayed and deferred plans. "Planning is actually post-planning"; cities are also the most energetic and dynamic terrain for imagination, aesthetic experiences and experiments, as well as for creativity. The speed of urban and social mutations has outpaced the evolution of established orders of institutions and urban infrastructure. Contemporary cities are (re)organising themselves, "expanding and developing in an instantaneous, flexible and efficient method that circumvents the established ideology of the modernist, rationalist planning tradition".

According to the speaker, urban transformations are generating new urbanscapes "saturated with electronic and digitalised images that are increasingly replacing conventional architectural forms". Cities are being constantly post-planned in the wave of image culture. This wave, embodied in the mass media and in individual art works, etc., is like the city itself: "intense, dense, complex,

hybrid and generating new spaces for invention and creation". Facing the "image-isation" of urban space, digital video (DV) and digital imaging are forming a new linguistic paradigm, beyond the traditional one of cinema/television. DV in particular most efficiently incarnates the new culture of images, and "transports our imaginations...onto a new platform of interactivity and continuous mutation".

The advantages of DV as a medium is that it is "unprecedentedly democratic": its low cost and technical flexibility make it highly accessible and therefore pervasive. As a hybrid medium, DV penetrates both private and public space and encourages their merging in order to generate a new definition of urban space in general. It "promises to "go beyond the art world to become the best weapon for all kinds of urban *flâneurs*". In addition, it has entirely changed the language of art, and encouraged people to imagine and create their own fantasy worlds. DV and digital imaging technology in general provide everyone with a "factory of dreams" that is at once highly personal and collectively shared. With regard to the Asia-Pacific region, the flourishing of DV indicates the openness of the populations here towards modernisation, "and their awareness that new technology is their sole chart for navigating the ocean of globalisation".

Giving detailed examples of artists who are working out sites on this new platform, the speaker concluded with a description of how the proliferation of DV is naturally attended by a need for spaces of presentation and promotion, which are not being met by established institutions. Instead, artists and cultural activists are working together to open up new locations, "often ephemeral, sometimes permanent". The question of identity crisis in this new urban space, or the tension between the excitement of discovering new forms of cultural liberty in the city, and the feelings of anonymity, flux and alienation that are also present, causes a "fundamental revolution" in perception, values and social behaviour. And meanwhile, "all those who are implicated are haunted by the need to find a more humane way of living". This conflict is a favourite subject for many artists, who never cease to be fascinated by their daily discoveries of change in their cities.

Nick Dyer-Witheford began the discussion that followed, stating that commercial digital items such as Play Station are built with material mined in the Congo by child labour, exploited by warlords: as we "move up the production chain", every layer reveals "brutal and primitive forms" of exploitation "sedimented under the activities of the hacker class". This created very severe problems in terms of human values.

McKenzie Wark replied that he was "not unaware" of the landless labourers exploited in Brazil, or the child labour in the Congo. The hacking community did have a relationship to such modes of dispossession, and were implicated in the social struggle. Medosch suggested that Dyer-Witheford was "misreading" Wark's argument. "We are not supporting the information society; you are looking for something that's not there." Bhrigupati Singh, researcher, pointed out that the "immateriality" in digital/hacking spheres opened up realms of possibility that also meant taking in realms of threat. All information was characterised by four aspects: saturation; scepticism/lack of empiricism in terms of fact-checking; the dialectic of profit and loss; and the negation of excellence, i.e., the pursuit of excellence was something to be looked down upon. Wark added that each domain has its own set of practices, and that the ethics of digital communication also resulted in a construction of "rarity", i.e., veracity in a world of simulacra.

Rosemary Coombe pointed out that intellectual property regimes traditionally created a tripartite structure: original/innovative ideas, the expressive work, and the product. This was a "sophisticated rendering", not just a compilation of data. Wark responded that such rendering was "false and arbitrary". Coombe claimed that it enabled certain kinds of activities, and that we

seemed to have abandoned a whole critical vocabulary. "Everything is not information...We need symbolic forms," she asserted. Wark replied that symbolic forms are "only information in different arrangements and scales". The unique ontological property of information was that it was not inseparable from its material form; it was contingent to it. Medosch stated that Wark was "fetishising" information; this was counterproductive, as we do have a need for metaphors, tropes and symbols.

An interjector asked Wark if there was a difference between "information" and "data", in his thinking. Wark replied in the affirmative, adding that in our use of information, we have to work alongside class relations within the social formation. An interjector queried as to whether, in the domain of a post-capitalist society, Wark considered "sender-receiver" too simple a term in communication theory. Wark replied that he indeed felt it was simplistic: "context", or "channel", was more effective. Referring to Hanru's depiction of the new-media "radical" image of the city, Solomon Benjamin asked if these representations were connected to the ground realities of the Asian urbanscape. Hanru answered that through the use of new media, "anyone can potentially become an artist". He added that "artists have to open themselves up to new possibilities, and not just stay within traditional bounds".

US Path to Wealth and Power: Intellectual Piracy and the Making of America

Doron Ben-Atar, *Fordham University, New York*

The speaker narrated the "story behind the story" of the 19th-century American boom in industrial innovations, stating that the cause was a dual system of principled commitment to an intellectual property regime, combined with an absence of enforcement to enforce these laws. During the first decades of America's existence as a nation, private citizens, voluntary associations and government officials encouraged the smuggling of European inventions and artisans to the New World, openly violating the intellectual property regimes of European nations. Simultaneously, the young republic was developing policies that set new standards for protecting industrial innovations.

Thus, while offering protections in theory, in practice the country encouraged widespread intellectual piracy and industrial espionage. Such an "ambiguous order" generated innovation by promising patent monopolies. At the same time, by declining to crack down on technology pirates, it allowed for rapid dissemination of innovation that made American products better and cheaper.

Ben-Atar pointed out that less than two decades ago, China was a country of poverty and underdevelopment, while today it is one of the "premier engines of world economic growth". Mao's successors "have also realised that in order to join the ranks of the developed nations, China must close the technology gap, and the surest and quickest way to do this is to pilfer Western know-how...The depth and extent of the Chinese piracy effort, which has included everything from computer software to music...is one of the few issues on which there is bipartisanship right now in America." It is estimated that China's "transgression" costs the American economy $1.3 billion dollars per year. "With this kind of money at stake, the conflict over intellectual property has risen to the forefront of conflicts between developed and developing nations."

According to the speaker, the developed nations are concerned about piracy both by consumers and by producers. On the consumer front, companies and individuals in developed nations complain that their creations, whether design accessories or drug patents, are being copied and sold without authorisation or compensation. Piracy by producers in the developing world causes even greater anxiety in the West. The movement of manufacturing to the developing world where raw material is available, and labour costs are low, has rendered intellectual capital the most important asset of modern corporations. "It is not an exaggeration to say that intellectual property has become the most important anchor of Western prosperity."

The speaker clarified that he does not consider piracy "a social virtue". Nor was he in favour of doing away altogether with patents and copyrights. Sometimes, if applied in the right manner, these are a "useful method of promoting social good". But "before Americans rush to condemn those who pirate our know-how, they must not forget how America became the richest and most powerful nation on earth".

Ben-Atar narrated how the US government realised early on that political independence from Britain had to be followed by economic independence. The country's founders believed that the nation needed to reduce its vast consumption of imported English manufactured goods. The new defiant American mood, heightened by wartime demands for military and industrial goods and the post-war desire to prove the compatibility of republican government and a high standard of living, viewed technology piracy as the key to industrial development.

However, at the same time, keen on showing to the world that it was ready to take its place among civilised nations, the US enacted strong intellectual property laws. A self-respecting government eager to join the international community on an equal basis could not flaunt its violation of the laws of other countries. Patterns established under the semi-anarchic revolutionary and confederation circumstances were thus deemed inappropriate by the nascent Washington administration, whose chief task was establishing legitimacy at home and abroad.

Presenting detailed examples from early American political history, Ben-Atar described the establishment of the patent laws, in a context where piracy took place with the full knowledge and sometimes even aggressive encouragement of government officials. President Washington in his first State of the Union address actually pleaded with Congress to enact legislation to encourage "skill and genius at home, and the introduction of new inventions from abroad".

The speaker stated that every founding father of the United States, from Franklin to Jefferson, understood the inferiority of American technology, and viewed it as a problem. All believed that American economic independence was necessary, because political independence without economic independence was meaningless; "the only way to catch up is through piracy and all of them supported it. And every one of them, in one way or the other, engaged in the practice."

During the 18th and 19th centuries, there were three forms of technology transfer between the US and Europe. One was the knowledge itself, whichever way it came. It could come as something written or described, but this was problematic because descriptions lacked standard measurements. For example, when people registered for patents in the English Patent Office, they were required to describe the machine, but they always kept the descriptions vague because they feared that if the descriptions were too detailed, the machine would be copied. Another form of transfer was the machines themselves. But these were not of great use unless you knew how to operate them. The people themselves, the carriers of skill and technological know-how, were the crucial node in this process. The migration of artisans and the dissemination of technical skills took place in

spite of a concerted effort on the part of the British government to keep its trade secrets at home.

"As the imperial conflict between the patriots and the metropolis took shape in the mid-1770s, the British Parliament ruled that all people leaving from the British Isles and Ireland for North America, with the intent to settle, were required to pay £50 per head." After the United States won its independence from Britain, the act of exporting equipment for various industries, from textiles, leather, paper and metals to glass and clock-making, was prohibited in the 1780s. The utopian socialist thinker Robert Owen, recalling his earlier days in the English textile industry, reported that in the 1780s, "cotton mills were closed against all strangers. No one was admitted. They were kept with great jealousy against all intruders, with their doors being always locked." A tactic that can still evoke smiles was that of employing Welsh speakers in certain mills. These people were "safe"; they could not go anywhere or divulge anything, as no one understood their language.

The American founders knew of these restrictions. But they also believed that for United States to survive politically and economically, it had to close the technology gap. Framers of the US Constitution unanimously approved Article 1, Section 8, which instructed the government to promote the progress of science and useful arts by securing, for a limited time, for authors and inventors the exclusive right to their respective writings and discoveries. Inventors and authors were the only occupational group given special benefits in the Constitution.

This was a significant break from the English system of intellectual property, which was itself founded on the promotion of piracy. In the 14th century, the English monarchy lured European artisans to England by offering them a production monopoly. The English law of patents granted what are known as "patents of importation" to introducers. "Inventors" and "introducers" are different categories; yet in the English system, they are not distinct. The first United States Patent Act broke with the European tradition of patents of importation. It restricted patents exclusively to original inventors, and established the principle that prior use anywhere in the world constituted grounds for invalidating a patent.

In theory, the US pioneered a new standard of intellectual property rights that set the highest possible standards for patent protection, that of worldwide originality and novelty. But the intellectual property laws Congress enacted in the first 50 years of its existence were a smokescreen for a very different reality. The statutory requirement of worldwide originality and novelty did not hinder widespread, and officially sanctioned, technology piracy. William Thornton, who administered the American Patent Office for an extended period, did not insist on the oath of worldwide novelty. It is indeed entirely possible that most of the patent applications received were for devices that were already in use, since acquiring a patent required little more than the successful completion of paperwork.

Moreover, the Patent Act of 1793 explicitly prohibited foreigners from obtaining patents in the US for inventions that had been put to work elsewhere in the world. This meant that while US citizens could petition for introducers patents in European nations, European inventors could not protect their intellectual property in America.

Hence, transfer of protected European material was a prominent feature of political and diplomatic life in America's early history as a nation. Congress did not protect the intellectual property of European authors and inventors, and Americans did not pay for the reprinting of literary works and unlicenced use of patented innovations. Lax enforcement of the intellectual property laws was the primary engine of the American economic miracle. The first decades of national existence saw the most intense pursuit of English technology on the federal and state level.

Prior to the Patent Act of 1790, the Philadelphia legislature used to award prizes to those who introduced technologies pirated from Britain. An example of the logic/rhetoric: "It is with great pleasure we learn the ingenious artisan who

counterfeited the carding and spinning machine, though not the original inventor, being only the introducer, is likely to receive a premium from the manufacturing society, besides the generous prize for his machines. It is highly probable that our patriotic legislature will not let his merit pass unrewarded by them. Such liberality must have the happy effect of bringing into Pennsylvania other artisans, machines and manufacturing secrets, which will abundantly repay the little advance of the present."

In addition, it was stated that "the public purse must supply the deficiency of private resources, for as soon as foreign artisans be made sensible that the state of things here affords a moral certainty of employment and encouragement, competent numbers of European workmen will transplant themselves effectively to ensure the success of their design".

Thus, Ben-Atar asserted, the US took a "Janus-faced approach" of simultaneous theoretical distancing from/pragmatic embracing of piracy. The fledgling republic had become the primary technology exporter in the world.

"The years of piracy upon which the current stature was founded were, however, erased from the American national memory. The intellectual debt owed to imported technology did not turn the US into a champion of the free exchange of knowledge." As the diffusion of technology began to flow eastward of the Atlantic, America emerged as the world's foremost advocate of extending intellectual property rights to the international sphere.

The speaker concluded that the developing world is following a similar route. Formally, all members of the World Trade Organization promise to respect international intellectual property rights. But in practice, developing nations do little to enforce those laws. Ben-Atar clarified that he was not drawing these historical parallels in order to condone piracy, but rather to point out the arrogance of the West's "often self-righteous position" on intellectual property.

Embodied Property to Disembodied Signs

ImprobableVoices.net: On the Intellectual Property of Individuals Whose Bodies Are the Property of the State
Sharon Daniel, *University of California, Santa Cruz*

Trespasses of the State: Ministering the Copyright/Trademark to Theological Dilemmas
Naveeda Khan, *Johns Hopkins University, Baltimore*

Sharon Daniel's presentation, which included audio clips, addressed intellectual property rights in relation to human rights. Article 27 of the UN Declaration of Human Rights states that everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he/she is the author. Describing herself as a "context provider", the speaker discussed her work at Central California Women's Facility (CCWF) in Chowchilla, California. For two years, Daniel collaborated with Justice Now, a non-profit, human rights organisation that works with women in prison; she "illegally" documented conversations with women prisoners and published their views in the public domain of the digital media. This online audio archive is an attempt to bring forward alternative, more accurate representations of prisoners and the social/racial repercussions of imprisonment. The audio clips include statements made by incarcerated women, their political analyses and articulations of their experience in prison. Their imaginative proposals for a monument to the end of the prison industrial complex are visualised for the site by a variety of artists.

The speaker's presentation focused on questions regarding the authorial subject, subjection and the status of the intellectual property of prisoners. In the US, prisoners' bodies are literally property of

the state and therefore their right to free speech, their claim to intellectual property, is contested; prisoners in the US are individuals who are no longer citizens of their state, but its property. Access to prisoners and prisons by the media or human rights investigators is virtually non-existent. In direct contradiction of Article 19 of UDHR, several states, including California, have enacted media bans, making it illegal for the media to conduct face-to-face interviews with prisoners that are not censored by prison officials. "In the current political climate in the US – one that supports shutting down public access to information about government conduct, increasing repression against people of colour and immigrants, the dissolution of civil rights and disregard for international human rights law – it is necessary to find alternative means of getting information into the public sphere," Daniel asserted. She intentionally disobeyed this media ban, and gained access to inmates in the state prison system by posing as a "legal advocate", recording conversations with prisoners and soliciting their stories, ideas and opinions.

According to the speaker, the visits require adherence to "Kafkaesque" regulations and acceptance of invasive search and surveillance procedures. Visitors must be "cleared" by the prison authorities, based on identification papers and lack of police record. Daniel was registered for each visit and searched on entry. She was allowed to bring in only a clear plastic bag, a clear ink pen, her ID, a blank legal pad and a mini-disc recorder. The recorder has to be approved weeks in advance (the serial number is registered and checked) and the device is inspected on entry and exit. Only factory-sealed discs are permitted. After the interviews, the inmates are subjected to strip search and visual body cavity searches that may be performed by male guards.

"Clearly these women are highly politicised and seriously committed to having their voices heard," Daniel commented. "In our documented conversations, the participants articulate their experience, history, social position and political views. These recorded and written conversations are extraordinary. Each participant's personal narrative is compelling, and political analysis acute and incisive. Each participant asked to have their full name associated with their statements online, despite the possibility of retaliation by the authorities." The website ImprobableVoices.net, which was commissioned in 2004 for the online exhibition (ImprobableMonuments@CameraWorkSF.org) "is meant to celebrate the impossibility of traditional representation from a single point of view in contemporary art and politics. It functions as a repository or archive – not as an authorised, monolithic representation – but as a site of multi-vocal negotiation among individuals who are ready to take responsibility for representing themselves."

According to Daniel, prisons in the US function "as both monument and repository", in the very worst sense of the term. "They are monuments to the criminalisation of poverty, and human repositories where the secrets of economic and political power are kept safe. The prison industrial complex is the quintessential embodiment of power and authority in capitalist America: a corporate/state collaboration designed to profit from the incarceration of marginalised communities on a massive scale, and to enforce their continual political disenfranchisement by law." Over the past two decades, California alone has built 21 new prisons, spending roughly $4.4 billion on infrastructure, and an estimated $26.2 billion more to keep it functioning. California Department of Corrections spending has exploded, from just under $300 million in 1984 to the current $5.7 billion a year. Currently, California spends more to expand and maintain the prison system than it spends on public education. This expansion has transformed remote, rural and financially struggling towns into thriving economic hubs in the prison industrial complex.

In the 1980s, there was a dramatic shift in attitude toward crime and punishment in the US. Lawmakers dismantled programmes designed to

help rehabilitate criminals, and passed tough new sentencing laws that put more people in prison for longer periods of time. For example, California's "three strikes and you're out" law, under which a person who commits a felony and has one previous "violent" or "serious" felony conviction (which includes burglary of an unoccupied dwelling, possession of a controlled substance, solicitation for prostitution, cheque fraud, etc.), is sentenced to twice the term prescribed by law for each new felony. If the person has two previous violent or serious felony convictions, he/she is sentenced to life. Because "three strikes" is applied retroactively, it is in direct violation of Article 11(2) of the UDHR ("No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed."). As a result of "three strikes", mandatory sentencing laws, prosecution of minors in adult courts and "tough on crime" legislation, inmate populations have exploded, and so has the prison industrial complex.

Daniel explained that the weak protection of prisoners' rights under federal law (provided in the Constitution) allows state law to violate them. The regulation of prisoners, their rights and their living conditions, are left to state governments who appoint governing boards to oversee prison administrations. This essentially leaves prisoners' rights, or lack thereof, in the hands of politicians, prison administrators and guards: "interested parties" who are economically dependent upon the growth of the prison industrial complex. A market economy of prisons has led to a market demand for prisoners (a strong lobby for ever-tougher sentencing to satisfy the need for more cheap labour and maintain the corrections economy). For example, inmates in state and federal prisons are often employed by private corporations for extremely low pay, and prisons are "serviced" by giant corporations like MCI and Marriott, for monopoly contracts for catering, telephone service and medical care.

In addition, Daniel stated, a prisoner's right to free speech, claim to intellectual property, personhood and citizenship are all contested. The prisoner is a "legal subject" subordinate to the rule of the state, but denied the right to political participation that should be normatively assumed by citizens. The prisoner is "de-subjectified" in every sense of the word 'subject', political, psychological and philosophical. The prisoner is denied agency, stripped of individuality, receives cruel and inhumane treatment, and is literally objectified. A prisoner's body is the property of the state, a legal object. In California, a prisoner who attempts suicide unsuccessfully can actually be charged with destruction of state property."

When the 10 participants from CCWF were provided with a chance to "reverse engineer the world through fantasy", they proposed a variety of possibilities for replacing, re-inventing or creating a new purpose for the prison. These included parks and gardens, children's camps and farms, housing for the homeless, schools, community centres and training facilities, sculpture and sound installations, a fund for HIV/AIDS victims, a commemorative fund-raising walk, historical archives, quilts, walls and stained-glass windows inspired by the AIDS Quilt and the Vietnam War memorial, and even rides/attractions in the manner of Disneyland. "As improbable as it may seem, Justice Now, the women and I, are actively imagining (and thus making the first steps towards building) a world without prisons," the speaker concluded. "But I can't be free until these women are free. I can't be safe until they are safe. I cannot enjoy my inalienable rights till they achieve access to theirs."

Naveeda Khan defined her research as part of her ongoing work on the Pakistani state's "pedagogical project to forge modern Muslims", a project that "simultaneously exalted and feared

the capaciousness of the Muslim to 'become'", and at the same time "appeared to accept limits of knowledge on who is a Muslim". The speaker focused on the political exclusion/oppression of the Ahmadiya, a Muslim sect of 19th-century origin. She asserted that the modalities by which the state tries to transcend the limits of its knowledge regarding who is a Muslim involve emergent legal genres, notably the copyright and the trademark, which are "made to reach beyond themselves". With regard to copyright/trademark, the speaker intended to track their prefiguring within a culture of pious imitation specific to 20th-century Pakistan; their emergence within Pakistani courts struggling to give expression to the "Ahmadi problem" within the limits of positive law; and the imagination of the Muslim as both a rights-bearing subject and as an object of licencing and verification that the copyright/trademark enables.

Khan clarified that the copy is central to the Islamic tradition; but we have to be careful not to read "copy", understood in its modern sense as a "mass-produced object co-emergent with yet marking a break from the original aura-saturated object (*pace* Benjamin), into a tradition that values pious imitation". The Prophet Muhammad is the model for emulation, and not copying, for all Muslims. The *insaan-e-kamil* (the perfect person) strives to embody the Prophet in appearance and behaviour, "the proper alignment of interiority and exteriority" being key to this pious imitation. The speaker discussed three legal judgements (1978, 1985 and 1993) in which the judges, "having exhausted all theological and legal arguments as to why Ahmadi claims upon the title of 'Prophet' and 'Muslim' are misguided, ask whether the Ahmadi attempt to 'pass off' as Muslims can be considered a bad copy of the original".

According to Khan, the Ahmadiya may be seen as an expression of the "messianic strain" within the Islamic tradition, "an attempt to rebirth and re-experience revelation in the contemporary world. Mirza Ghulam Ahmed, the founder of the movement, claimed himself to be a prophet in the Islamic and Christian senses, and, on occasion, an avatar of Krishna in the Hindu sense...If the Prophet Muhammad was the shadow (*zil*) of God upon the universe, Mirza *sahib* claimed to be the shadow of the Prophet upon the world. If the Prophet was so perfectly constituted as to be a reflecting surface for the Prophet's virtues, Mirza *sahib* claimed himself to be a reflecting surface for the Prophet's virtues, his manifestation (*buruz*) upon the world. In either case, Mirza Ghulam Ahmad considered himself to be only a 'partial Prophet', a *mursal* (messenger sent by the Prophet). This claim alone is quite controversial, for it suggests that the Prophet operates independently of God in sending messengers of his own. But Mirza *sahib* then went on to claim himself a prophet in his own right. He said that he had so abjectly merged himself with the Prophet that he transmitted the Prophet's being through himself. He was in effect the Prophet." In other words, he claimed the status of a "non-legislative prophet whose coming did not undo the law brought by the legislative prophet, the Prophet Muhammad, but only enhanced it".

The state considered that this "copy" of the Prophet was self-vaunting in competing with and finally subsuming the original, and the average Ahmadi was similarly "a pesky copy of the Muslim", Khan explained. The orthodox *ulema* labelled the Ahmadis *kafir* (infidels) and *murtadd* (apostates); Ahmadis were viewed as Muslims who had "placed themselves beyond the pale of Islam through their support of a *taghut* (the antonym of Allah, a devil, a sorcerer). Their continued support of Mirza Ghulam Ahmad rendered them suspect as *munafiqun* (hypocrites). These categories were reproduced by the judges in cases involving the Ahmadi; they "imply a relative pariah status, moral disapprobation and, possibly, punitive charge. At the same time, *tauba* (repentance) was always a possibility, with differential availability, to allow one to shake off these characterisations and return to the fold of the community." However, after the constitutional

amendment of 1974, Ahmadis were classified as a "non-Muslim minority" along with Hindus, Christians, Buddhists and others living in Pakistan. This political act "seemed to allow for a seamless transition of the Ahmadis from the status of Muslim to non-Muslim without the manifold differentiations, movements and durations enfolded into the pariah status within the theological register."

Khan stated that in each judgement, the judges claim that Ahmadis are not only bad, but also dangerous, copies of Muslims. "What they are remarking upon is a certain ontological challenge offered by the copy to the original. If Ahmadis consider themselves rightfully guided Muslims and everybody else *kafir* in keeping with a 19th-century *fatwa* (legal opinion) pronounced by Mirza Ghulam Ahmad, then Muslims accepting the Ahmadi assertion of being Muslim, even if that acceptance was only deduced from their paying attention to it, would in effect be like an original accepting annihilation at the hands of its copy." She brought up the *shia'ir* or distinctive markers of the Muslim *ummah* (moral community), forbidden to Ahmadis: the mosque form, the mode of prayer, the call to prayer, the honorific titles and revered texts, and cited the judgements involving these, which use the trope of copyright/trademark. "This strategy [of Ahmadis passing off as Muslims]...bears strong resemblance to the passing of by a trader of his inferior goods as the superior well known goods of a reputed firm." Also: "If an Islamic state in spite of its being in power allows a non-Muslim to adopt the Shia'ir of Islam which affects the distinguishing characteristics of the Muslim Ummah, it will be the failure of that state to discharge its duties."

According to Khan, the Supreme Court understands that company/copyright/trademark law has an affective dimension that spontaneously calls forth a particular reception and response to its transgression. "Ahmadis encroach upon the Islamic state because they can. Neither Muslims nor the Islamic state is affectively constituted and legally armed to provide the necessary aura of protection around such objects, such that non-Muslims may recoil from using these." The judgements in effect call for an "affective-legal feedback loop", which involves the "reconstitution of the Muslim, that is, the re-education of the Muslim in line with the emergent possibilities of the copyright/trademark". Taking up Gilles Deleuze's understanding of simulacra, the speaker commented that there is a space between Ahmadis and Muslims, "a massive space of movements" in which Muslims are always becoming minority even as they render Ahmadis a minority for attempting to become Muslim. She concluded that the modern discourse of the copy may be seen as a way of giving specific expression to a "generalised fear about the improper emulation of the Prophet and his followers, by suggesting an agonistic and antagonistic landscape in which originals and copies vie for supremacy".

Brian Larkin initiated the discussion following the presentation, remarking that Khan was dealing with "a very extreme categorical case". He asked whether this argument could be used in Islam more generally. For example, could one argue the same thing for the Nation of Islam in the US, a group who are also looked upon as "bad Muslims". Or could one argue against Shias, Sufis, in Pakistan? He also commented that with regard to the field/theme of "copying" in South Asia, the colonial context/history included the psychological and sometimes literal processes of "becoming white but not quite". There was a general anxiety about copying, about "becoming something": this desire to transform/be transformed in this manner caused "tremendous" anxiety all over the British Empire. Khan pointed out that she had emphasised the fact of this debate around copying being specific to a particular kind of Islamic modernity in Pakistan. One of the fears around this was also that it could be harnessed in the context of the Shia-Sunni relationship in Pakistan. So far, the Ahmadiya

have been the group against which all the other sectarian groups have tended to coalesce. But this argument could be used against other groups. The speaker clarified that she had not done enough detailed research on the fallout of the Supreme Court judgement in all cases filed against the Ahmadiya. A Chief Justice she had spoken to said that "everyone laughs at the judgement, no one reads it".

Khan said that she was interested in "colonial pedagogy", in which subjects are "poor copies" of the British. She asserted she would take some distance from the usual literature which sees this as a "derivative" identity; nor would she interpret the status as "a slip back into nostalgia", or along the binary of tradition versus modernity. "I'd like to take pedagogy seriously because only then can we really understand the seduction, the pull of a place like Pakistan for those in the Pakistani movement. I would try to understand pedagogy not as a collapse back to the colonial project of becoming British, but as trying to excel in something, trying to become something modern, or something wonderful, or something capacious."

Shuddhabrata Sengupta asked Daniel how one should think of the subject position of people who are renouncers of property rights: "This figure came up yesterday with regard to the voluntary commons; here the prisoners are constructing, through this project, a voluntary commons...Does this have to do with the fact that they are without caste, as prisoners?" The process of incarceration "makes you bereft of claims to property while you are in prison, or makes you bereft of claims to personhood that are different from being a non-prisoner". Daniel replied that the lack of citizenship and lack of recognition of personhood creates a kind of community environment in which the women "feel almost interchangeable, to some extent, while still maintaining their desire to be individuals and be seen as individuals". Referring to the audio clip of Genea Scott, an inmate whose recording had been played during the presentation, Daniel explained that most prisoners did not go by their own names. "Beverly Henry is 'Chopper'. Genea is 'Aries'. Every single one of them has a prison identity, and they may act according to these very differently than they would act outside. I was working with Zundra on her 'bio'. She said, 'I am a woman. I have a name. I have children who bear that name.' The prison environment does create a commons of resistance, a commons of mutual support."

With regard to Khan's presentation, Sengupta remarked that the idea of the copy and the anxiety around the copy might be quite central to an understanding of the theological authority in Islam, "because the process by which the codex of the Quran is consolidated during the reign of the early Caliphs also involves the destruction of other extant versions which then become labelled retrospectively as perhaps copies: that they are imperfect renditions of what would have been the perfect telling." This anxiety about the copy and the original then permeates itself through Islamic history. "Would you say that there are certain cases where the history and conventions of dissimulation actually protect people? So that within the Shia tradition, it is possible to say the Shia practice of dissimulation, the *taqiya*, and the foreknowledge within the larger Muslim community, actually protects the Shia, because dissimulation is seen as not acting in bad faith. Whereas the Qadiani (Ahmediya), emerging from a different tradition where they don't have recourse to a history or a convention of dissimulation, somehow have to deal with this charge of bad faith...In one case, the idea of the copy is so prevalent that it therefore produces anxieties about copies all the time; and in other traditions, there being a lack of anxiety about the copy, dissimulation is seen as a positive practice, and not a negative one."

Khan replied that in terms of *fiqh*, Islamic jurisprudence, there is "lots of conversation" about the gauging of intention, the gauging of bad faith. "So it's not as if the judges are plucking this out of the air, this imputation of deception to the Ahmedis. Similarly, there is a sort of current

within the *fiqh* tradition, also the Sufi tradition, outside of the strictly Shia tradition, in which it is not *taqiya.* There is another series, a host of words, in which another kind of dissimulation is called for—-if you are living under an oppressive ruler, for instance. There is a certain kind of necessity to both keep the peace and also retain your interiority in a certain way...your knowing the right way to be a good Muslim." The speaker brought up the historical case of resentment against Hindu processionists playing loud music in front of a mosque. "The religious leader said, 'Just pretend that you don't care...keep the peace...this has not been declared a *dar-ul-harb* (land of war) so we can't neessarily take recourse to violence. So just pretend that it doesn't bother you.' This is not dissimulation in the *taqiya* sense but a practice of maintaining the peace in a more regular sense, on an everyday basis. This might come under the category of *bardasht karna*, a kind of gritty tolerance."

Awadhendra Sharan, Sarai-CSDS, commented that the fact of senior judges saying, "People don't really read this," i.e., laughing off the judgement, as reported by Khan, prompted him to speculate as to whether in this body of judgements, "there are a number of ways in which 'deception' is considered, of which the copyright analogy is one, and whether there are divergent points of view, as often happens, not necessarily synchronised". So to think of deception even through these judgements would require an elaboration of these other ways in which it is considered, "and see the possible relations between them". Khan responded that she had also looked at subsequent cases involving the Ahmediya, following the judgement. "The copyright argument is not brought up in the next few cases. There is recourse to an older way of talking about the Ahmediya, i.e., classifying them as 'hypocrites'...There are diverse ways in which deception is being codified, but what is interesting is that each judgement seems to enact a new trial for the Ahmediya. Each case seems to start afresh, as if these judgements had not been made, as if there hadn't been these deliberations on deception already."

Cori Hayden asked about the role of analogy in both presentations. "One way of legal reasoning is to draw analogies with things. I tend to give too much weight to the substance of the analogy; but here, if you are drawing on a different codification of hypocrisy, does that work in the same way as the legal reasoning around copyright, i.e., 'this is the same as that'?" Khan replied that the question was central to her argument, and her exploration of relationships between modes of dissimulation/simulation. "'This *is* like that, this *sounds* like that': in a way, what I'm doing is suggesting that the judges sense that there is a call from the plaintiffs or whoever has filed the case, a call for a certain kind of drawing of the analogy, and the judges then see if they can provide the analogy. In the Supreme Court cases they supplied it; in other cases they flirt with it, as containing a serious threat. But in this final round, the 1993 judgement, the analogy is offered as an attempt at the re-education of the Muslim."

The final interjection came from Lawrence Liang, who reminded Daniel that she had presented objects of property who are attempting to articulate themselves into a subject position. "In a curious way you've characterised this within human rights discourse, using intellectual property under the UDHR as the mode to do so. Your work suggests a far more complex and imaginative terrain through which this can be articulated. The discourse around the kind of knowledge you're talking about can only happen through circulation," Liang remarked before he asked the speaker for her perspective on circulation, "including circulation as discourse". According to Liang, the Creative Commons is limited with regard to its ability to convey the kind of "intense and substantative politics" that the speaker's project invoked, outside of the parameters of intellectual property and human rights discourse.

Daniel clarified that she had developed the

intellectual property/human rights aspect of the paper specifically for the context of the conference. In collaboration with the human rights group she worked with in California, she had addressed the issue of circulation in different ways, through the exhibition that the website was commissioned for (www.improbablevoices.net), the digital space of the monument that was reconfigured as a repository, "a non-monolithic kind of representation". She added that she also approached the issue through a critique of authorship, and that her initiative is to look at things through open systems. "Further development of this interface will include a way for people to upload observations and interpretations of the women's proposals in the monument site. I think of authorship as an open system without much consideration of licencing and property rights, and more consideration of what's at stake in bringing forward this kind of content; what's at stake for both the public and for the women whose IP it actually is. And for the women, those stakes are very physical, very material, which is the important consideration."

Network Conflicts

The Communications Commons: Lessons from Contests in Electrospace
Dorothy Kidd, *University of San Francisco, San Francisco*

ÄÄNIradio: Participatory Open Radio Projects
Sophea Lerner, *Centre for Music and Technology, Helsinki*

Dorothy Kidd's presentation focused on the tension, in both radio and in media/communications, between "the communications commons" and "media enclosures". She clarified that this differed from the definition, by Lessig and other scholars in the IP debate, of the commons as "a spatial and temporal resource actually existing among and between privatised spaces". According to Kidd, the commons is "actually distinct from public spaces". Her argument was oriented towards "reinserting" the social actors, the commoners, left out by Lessig. The "commons vs. enclosures" contest has been about communications, and in the field of radio there were two critical moments that the speaker analysed in detail. "The first enclosures were based on expropriation of land and the commons. Today's enclosures are based not only on the expropriation of land and traditional knowledge systems, but also on the expropriation of cultural production. In the American empire, the military is the No.1 export; communications and entertainment is No.2...it is key to the extension of the empire."

The speaker described two periods: the installation of radio communications in the US and the creation of a "radio commons"; and a project challenging "one of the largest monopoly players in the US", Clear Channel Communications. Radio began in America in the early 1900s; it was immediately caught between two concepts. First, the utopian: in the popular imagination, radio could be used to extend peace

and democracy. "This was part of the discourse of radio even before anyone was on the air...it is not that different from contemporary discussions around ICTs and the Internet." Second, the state: radio was seen as a means of transferring information in a very hierarchical way. It was not seen as a communications medium but an information conduit. The US Navy wanted to use it to connect with their vessels at sea. The United Fruit Company wanted to use it as a means for the head office to connect with its plantations. AT&T wanted to use radio as a technology to commodify and sell their phone sets.

Kidd asserted that this "first enclosure" involved patents, "an attempt to stop the development of radio till AT&T could seize their profits". In response, the commoners bypassed this through forming, between 1908 and 1912, a flourishing community of hundreds of radio amateurs or "tinkers" (the speaker said she preferred to call them early "hackers"/"techies"). The state then stepped in through bringing in corporate partners and the US Army. "This is critical to many commons stories. The state is essentially saying, 'Don't worry, we will give you a significant slice of the pie, let's all get around the patents thicket: we will assign this new medium to you for your commercial uses, just stand by, it will take a little time.' Meanwhile, technology was being developed that lent itself to many and diverse community uses in the 1920s: educational and religious institutions, musicians, ethnic organisations, all formed a commons. This was not commercial, was voluntarily organised, and its purpose was dialogue and communications, the use of a shared resource for democratic expression on a very local basis."

The "second enclosure" came through the state taking what the commoners had developed ("like a software company in terms of the social relations of production") and developing this into a commercial medium. "The aesthetic was was very hierarchical, limited by time and closely monitored, instead of free...By 1925 it had been tied to the logic of profit, as corporations realised they could attract audiences for advertisers, which is still the mantra for the modern media." Kidd described the social history of that time as "Fordism taking off...there was a glut of industrial goods, and manufacturers were desperate to be able to advertise their commodities. They also began to distinguish between audiences...Radio was particularly targeted towards women, encouraging them to buy household commodities, while prior to this, women used to make these products themselves, in a pre-industrial format."

The "third enclosure" dealt with music. Early small independent stations had a high focus on music; there was a boom in the recording industry, including the recording of music by immigrant communities. Manufacturers in the 1920s got together and strategised to prevent musicians from benefiting from their labour. In the mid-1920s, the National Association of Broadcasters formed in response to musicians demanding performance rights (in the US, performers do not get performance rights in analog radio, only for digital radio). "After narrowing radio to advertising and reducing the power of radio musicians, the state moves in and says, 'There's a tragedy of the commons here, there's an overuse of the resource, too much interference between the stations, we need to step in and regulate.' The state creates a new social contract, two successive Communications Acts, in 1927 and 1934...These were contested by the corporate networks, as well as a reform movement (led by university stations, the churches and a small number of labour unions). But the reformers lost; Congress privatised the broadcast media system. US radio electrowaves would be leased to major corporate radio networks, which would be sustained by commercials. The US telecommunications system would be granted to AT&T under a regulated monopoly."

Kidd explained that the government made some concessions to the public, conceding that the airwaves were a public resource. Public review of the resource would be through the Federal

Communications Commission. The corporate licence holders would be obliged to renew their licences regularly, and to operate in the "public convenience, interest and necessity". Thus, while the first sets of radio commoners lost ground, the "public service rationale provided the opening for later generations of commoners to mobilise to extend the radio waves", first to community stations, such as Pacifica Radio when FM frequency opened in the late 1940s, and then other "public" uses when the Corporation for Public Broadcasting (funding National Public Radio) was set up in the later 1950s/1960s.

The speaker then described "a more recent enclosure of radio", exemplified by the policies of Clear Channel Communications. This company has grown from two radio stations in Texas to over 1200 stations in the US alone. "It is not just a radio empire but an international entertainment empire", which also own promotion companies, entertainment venues (concerts, Broadway shows), tours, outdoor advertising, billboards, taxi boards, etc., TV production and athlete management companies, in 65 countries. "Its operations are integrated horizontally and vertically." Clear Channel could best be described as a "global big box retailer of culture". It has a close allegiance with the Bush family, and after the US invasion of Iraq, organised pro-war rallies even while massive peace rallies were being organised. After the World Trade Centre was attacked on 11 September, Clear Channel was the first channel to come on the air and instruct their DJs not to play anything that might antagonise the public, for example, the peace anthem "Imagine" by John Lennon, and Cat Stevens' classic "Peace Train".

Kidd explained that Clear Channel, with its monopoly-style, litigious business practices, is so disliked in the US that it calls itself "the poster child of the conceived ills of consolidation". Its founder Lowry Mays has declared, "We are not in the business of providing music, news or information. We are not in the business of providing well-researched music. We're simply in the business of selling our customers products." These capitalist strategies were a stark contrast to the practices of radio cultural production, which was produced outside the corporate-controlled market. The larger corporations were content to let the musicians/small clubs/concert producers take the risks and develop the product, with the companies stepping in to skim the profits at the level of circulation, in marketing and distribution. Music was developed by local networks, focusing on artistic creativity, taste, aesthetics and community representation. This commons was sustained by a high level of collaboration and tacit knowledge between networks, and involved a mix of classes and races. Clear Channel, however, bought up the small African-American stations that pioneered hip hop, the small Spanish-language stations that pioneered the airplay of Latino sound, ended the relative autonomy of DJs through centralised programming and national playlists of homogenised music, closed down news production in most stations, cut jobs, and controlled musicians' touring.

The resistance to Clear Channel is widespread, from Congressional investigations (both Republican and Democrat), hip hop-oriented youth and Latino/African-American small station owners to rock/folk/alternative/Indigenous musicians, peace activists, environmentalists and trade unionists, Kidd affirmed. In a sense, the conglomerate has faciliated a new composition of commoners. These include audio programmers and "techies", unionised and independent musicians, media policy advocates and those working to challenge corporate domination. These "commoners" have said to Clear Channel, 'We are part of a commons, your station is not only *your* station, it is part of a cultural imaginary.' Kidd concluded that "the lessons of the early enclosures of radio are still important to remember...the reform movement is still not united, but at least is meeting in the same room".

Sophea Lerner clarified that she was not giving an academic presentation but was addressing the audience from the perspective of a practitioner.

She described her project as "ad hoc", "pragmatic", "an accident waiting to happen", "something that couldn't have emerged as a strategic initiative, but only as a tactical fallout of a process of concerted *bricolage*". The ongoing project was part of her practice as a sonic artist in various pirate radio communities, exploring sonic modes of digital participation. Lerner pointed out that there were "different legislative environments in different radio production cultures" that facilitate the dynamics of broadcasting, and it was essential to understand these contrasting contexts and milieus if one was to understand the creation of the radio commons.

The speaker began with an account of her experience of broadcasting in the UK in the late 1980s, when the BBC was the dominant 'public' 'professional' model. There was also a commercial sector, and a community-oriented pirate sector that had a relationship with the music industry, and followed commercial formats to some extent. Community stations in the UK at that time were using licences to be able to work; the licences were expensive and difficult to obtain, but gave the stations a foot in the door. Lerner then described working in Australian radio in the early 1990s. "There is a very strong history of community broadcasting in Australia. Radio is very important, because of the massive distances between places on the continent. It was fantastic to find myself in a context where community broadcasting was a normal activity. Almost everyone could go to stations and volunteer, could be trained and work with a group. This creative practice was a common experience for Australians. The public broadcasting sector developed because of a strong support for radiophonic practice and creative radio making. But since then, it has been severely eroded."

The speaker narrated her experience of working in radio in Finland, where creative radio making was "struggling" in relation to public, i.e., state, broadcasting. "I asked about community radio, but no one knew what I was talking about. There was a particular history of community radio licencing but not a strong imaginary of radio. There was one community radio station set up but this was rapidly divided among a number of political groups in a way that was completely different from what community access might mean. There was no access to making radio." According to Lerner, "the FM dial in Helsinki is completely packed with absolute rubbish", and there is a commercial buy-up of most of its airwaves. "Most people in Helsinki have an idea of what radio is based on, and if anything different happens on the FM dial, they remember it 10 years later. Creative radio projects are spoken about for a long time. People wanted to get projects off the ground but said they did not have a model to follow, and were hampered by the potential expense of copyright collection, particularly...Finland has very restrictive technical broadcast legislation; this has to do partly with having a very careful relationship with its large next door neighbour, during the period of the Soviet Union. The possibility of using mini-micro FM creatively does not exist there. You can't even broadcast four metres without a licence. Any kind of radio transmitter, however weak, is illegal. But within this restricted framework, we discovered a sort of very relaxed implementation of what we can do, that gave us a particular niche we could experiment in. The positive thing about the context is that is is very, very, bandwidth-rich."

Lerner's project, ÄÄNIradio (*ääni* in Finnish means both "sound"/"voice" and is also the word for "vote", bringing together ideas of individual expression and public power through sound) began with a workshop called 'Signal Process' which involved observations, interventions and experimentation with social and sonic signals in municipal locations. Different types of microphones were used to pick up different signals; the aim was to get people to build small radio transmitters and redistribute these materials in public space. Lerner was initially refused permission because "even the transmitters that broadcast from the boot of your car to your CD player are illegal in Finland. You can't broadcast

anything without a licence." But later the state interpreted her project as educational, and granted the permissions and special event licence relatively cheap (€107, "which is nothing in a very expensive country like Finland...").

Lerner then involved software coders in developing applications that would enable collaborative audio scheduling. "We felt a radio should be accessed by a number of producers and participants so that lots of people could control what was being broadcast and when. It could bring together a number of sources from different streams, as well as files stored locally, and send them out through a different stream. This, combined with the project we had going in the background, to set up a flexible space and our own server that other people could work on, used participatory radio software which allows anyone from anywhere with a Net connection and a browser to participate in mixing the outgoing stream."

Lerner asserted that in Australia and Britain, "there is a paranoia about silence...If you have dead air for more than 30 seconds, you are actually in breach of your broadcast licence, and there are all kinds of fail-safes that kick in. You can get into trouble if you are quiet too long. But Finland has a cultural appreciation of silence as a social good. It was really cool that we could try stuff that might put us off air for periods of time as well. We had signals coming in from the sun and Jupiter as well, after we connected up with a radio astronomy project...we redistributed these onto the street for participatory performances that we did during the ISEA festival. It was a unique sonic community experience, a very experimental, no-strings-attached mode of terrestrial broadcast."

The speaker concluded with a description of the project's open content programming policy. "We put out a call, and got very generous responses. We did arbitrate, filter how people submitted material. The mode of anonymity opens up various forms of storytelling, but we operated on the NOT (Network of Trust) principle, in which people take responsibility for their content and identify themselves. In terms of the authorship debate, this mode of creative radio making dissolves the binary between 'passive' and 'active', the listener and the author/announcer. The listener has a strong role in participatory sonic practice; the listener is not just a lurker."

Monica Narula, Sarai-CSDS, initiated the discussion that followed, asking "What happens when something is shut down...how do we actually imagine making something, when a story of closure is actually opened out? How do we imagine who or what constitutes the 'public'? This is as important as imagining the author."

Dorothy Kidd responded by asserting that the story of "re-commonalising" in the US "was a big one". The media reform movement of the 1920s lost a lot, the potential for radio as a communication medium was reduced. On the other hand, every successive generation fought to extend that space. "The US network of community radio stations are singularly responsible for educating the American public about what is going on outside the the US...Very little information comes through commercial media networks about foreign realities and events, except via the Pentagon." There was also a network of "techno-sophisticated" pirate stations that refer to themselves as "low-power FM"; these were "ousted" in the late 1970s. "But a few years after this frequency was taken away, African American communities in Springfield, Ohio, began broadcasting into the projects. Despite successive policings, they kept going. Despite a thousand different stations being shut down, the broadcasts continued nationwide."

Such resistance led to a change in policy, and to the re-legitimising of these stations. "I am very hopeful," Kidd remarked. "I see in this history groups of people recognising not only the utopian potential of new communications, but its necessity for our survival."

Ravikant Sharma pointed out that there was a "sense of aesthetic closure" in the accounts of

both speakers. He asked for clarifications from their perspectives. "We also have FM 'rubbish'...In the context of Indian radio, we have to remember that film music was banned on radio for two decades following Independence, because advocates of 'high culture' decided it was not good enough. What are the contestations around aesthetics, in the contexts you have described?" Sophea Lerner remarked that she was not Finnish, hence there were many contestations she could not access, in that context. "I was referring to the way people feel...they criticise the fixed formats, the lack of alternatives; the dial is full of such commentary, people's ideas of what radio is. But I am not qualified to discuss the content." Kidd asserted that Clear Channel is disliked so deeply "not because it is a corporate player but because it is the Walmart of radio. It has so many commercials that people were turning the radio off, so the company voluntarily reduced the number of advertisments." She explained that she had lived in India in the 1970s, and used to listen to Radio Ceylon's 'Binaca Hit Parade'. "At that time, hundreds of top hits were played. Clear Channel has seven top hits, replayed through reproductive looping. It is incredibly monotonous. There is no dead air, no news. Unbelievably, after 9/11 happened, no one was present in the Washington station. And a Congressional investigation was provoked after a chemical disaster in a mine in North Dakota: Clear Channel was the designated emergency broadcaster, but there was no one in the station when the emergency units phoned."

Kidd then cited the example of Berkeley's Pacifica Radio, and Canada's "professionalisation" of community radio, to which she was "aesthetically opposed". The "homegrown micro stations in the US and Latin America are very interesting...there is a disregard of time schedules, no commercials, an incredibly rich playlist...these stations are not retailers of music, so they don't play packaged CDs, or feature syndicated programmes. There is a lot of live interaction, new text and context provided continually. This is missing in American mainstream radio and also in All India Radio. There is no public dialogue."

McKenzie Wark prefaced his question with a joke. "Lev Manovich had once said, 'Maybe what we need is very strict IP so that it would provoke us to actually create!'...He didn't believe this, of course..." Wark asked Lerner about the management of radio authorship claims in her public project. "Are you relying on people's self-disclosure?" Lerner responded that the call sent out was a broad one. "We had asked people contributing or referring us to sites, whether the content was within the Creative Commons, or within the public domain." Wark then asked, "Who is liable? That's what makes me nervous. Are you liable, or the contributor?" Lerner clarified that she would be liable, since her name was on the licence. "But I would do my best to keep people as aware as possible, let them know I've checked on as much as possible. It is labour intensive to follow up what people can't understand. For uploading to our website, people would have to come through us for a password...we always have a dialogue, discuss, develop a relationship." She added that musicians have a right to earn: "they are not being paid for their work, so we need to ensure that they get adequate glory. We kept track of what we took from the Web, we document, acknowledge, credit, attribute."

An interjector remarked, with regard to her experience of listening daily to both NPR and community radio in the US, that NPR, the standard government voice, had a prescribed daily news format/programming that didn't seem to credit the listener with much intelligence. She also said she was surprised by the violent imbroglio over Pacifica ownership that was constantly on air at that time. Kidd explained the NPR was part of a "generational reform movement" of the 1960s, to establish a "public...not a commons, but public professional, like the BBC. In the 1980s, there was a push for deregulation, privatisation in structural readjustment programmes, nationally. This

drained resources from NPR and PBS...now, VOA (Voice of America) and its propagandist trajectory is directing operations of NPR, with huge resistance from community radio. The NPR lobby is pushing for professionalised radio, formulaic, but that is another narrative. The Pacifica debate is two-pronged: part-political, part aesthetic."

The final interjection came from Aniruddha Shankar, Sarai, who asked if Clear Channel was using the "language of rebellion" even as it bought up stations and fired employees. Kidd answered that the company had a "neo-Fordist policy" with regard to radio: it was retail- and not production-oriented. It had an automated format that was copied; for instance, the country music format was the same all over the country. The stations in each city are consolidated in one building, employees mechanically multi-task, and the playlist is based on hard disk streaming; they have reinstated some local programming, "but it's just public relations".

Spatial Conflicts and Property Regimes

The Multi-Headed Hydra of East Delhi
Solomon Benjamin, *CASUM-m, Bangalore*

The Street Sellers in the Heart of the Illegal Market of Brazil: 25 de Marco Street
Lenita Cunha e Silva, *University of São Paolo, São Paolo*

Solomon Benjamin's paper described how formal regimes of property have an uncomfortable relationship to spaces and activities that operate informally and "illegally", innovating in terms of construction and allocation of buildings/land. The proletariat of modern urban cities like Delhi is shaping such radicalised localities. Here the artisan, enterpreneur and worker meld into the composite figure whose social and technical innovations are incomprehensible to formal regimes of property, yet are a threat to them. These innovations have a "tacky and uncanny ability" to negotiate formal spaces, and open them up to diverse legal situations/solutions.

The sophisticated forms of interlinked street-level production and innovation (*jugaad*) have transformed local administrations through a "politics by stealth". Such mechanisms are difficult to define, and hence control. *Jugaad* implies managing with what one has, and innovating on it. Benjamin drew upon a detailed historical study (spanning two decades) of an East Delhi neighbourhood, in order to describe the underlying factors of such a radical politics. Those who operate on this level engage with the "corridors of powers", bureaucrats and local politicians as well as municipal functionaries, whose complex relationships add a critical dimension to the survival, existence and profit of local *jugaad*-based businesses that flout/subvert existing property laws.

The speaker stated that economic processes are implicated in a certain kind of definition of property, of land as controlled by people. Tenure

was not a "bundle of rights" but a "bundle of claims", a more politicised way of defining land and location. People could be seen as "controllers", who are not individual entities but a "motley crowd", a "hydra constituted of local players with very fluid shifting politics". Spatial territories are contested, economies are increasingly interconnected, and institutions involved are "messy", corrupt and non-accountable, particularly municipal corporations "full of musty files". This hydra is very threatening to big business, IT, real estate, "civil society", and international financial institutions wanting to turn fluid local usages of property into "Property". But the resilient hydra employed a "politics of stealth", and could not be "civilised". Benjamin provided the analogy of Colombia, where *pirata* settlements drew off from the formal urban planning and were accepted as part of mainstream discourse. There was no fixed tenure setting: instead there was "a spectrum of agents, all claiming different parts of the real estate surplus".

The hydra works through the system, through the administration. Benjamin made a comparison with the zoning laws of New York City in the 1990s, when the bureaucracy found itself negotiating the intense conflict between the space claims of large supermarkets and small businesses. In India, the hydra operated essentially without being politically organised in the manner of a social movement. Unlike standard businesses with heavy capital investment, these informal firms operate from dwellings and develop their productions through a network that might seem "fuzzy" and chaotic. But in actuality, each aspect of production and innovation has a carefully considered market and business logic that is flexible, yet rigorous. The speaker explained how, prior to production, a market is identified through a detailed and developed network of transporters, retailers and wholesalers, and the product is then customised as per the needs and specifications of the market. Innovations are continuously carried out on the products, as well as imitation and copying; the products are altered to suit local needs. Large trade fairs are the key points through which new technology and modes of production are regularly co-opted. Brochures from the trade fairs provide the initial design map for the product, which is then adapted to the requirements of the local market.

Benjamin pointed out that a consideration of the human face of the economy constituted by clustering small firms shows that we can hardly use the conventional binary of "entrepreneurs and workers". Field research based on life histories shows that these labels are interchangeable. Workers move on in 3-5 years to become foremen, and after that, link to a variety of trajectories to start off their own firms in the main line of production, or into capital machinery. Some move to be trading agents. At times, these identities switch. Entrepreneurs and factory owners, even those from the financially astute groups of *marwaris* and *banias,* need to operate the machines on the shop floor to keep in close contact with the technological options that open up, and to respond to complex and dynamic market demands. Much of small firm finance is driven by complex local mechanisms such as pooled funds linked to real estate markets. These financial systems involve everybody, workers, factory owners, renters and land "owners", even if in varied degrees.

The speaker asserted that this intimate knowledge of financier circuits, even if power within these is unequally distributed, is critically important to make possible transitions between factory owners/workers/traders/innovators/artisans. Finally, the politics of regularisation implies yet another fluidity of multiple identities. The link between varied land tenure and economy means that those participating in it have a direct stake in the politics of establishing location, of regularisation, and of access to infrastructure. Thus, meetings to decide on political strategy during election time include not only "landlords" but a variety of other groups, including workers. These last are included not as "labour", but have

chosen to be present due to their direct implication in the form and process of production, as well as in their connection to property via multiple tenure regimes.

As these informal, dwelling-based firms emerge in the "illegal" zones of the city map, they have to constantly negotiate with government nodes in order to secure amenities and prevent the demolition of their structures and networks. Benjamin concluded that this engagement with the system has enabled the operators to understand and find creative ways to deal with the local political hierarchies. On the one hand, the planning and zoning of the city threatens the existence of the informal sector. On the other hand, the informal sector is pragmatically acknowledged by the formal sector as well as the state, both seeming to have resolved to transact with the street-level hydra, which has not only managed to survive big business presence but also managed to compete with it.

Lenita Silva's presentation, accompanied by slides, was a case study in three segments. The first was an overview of the Brazilian situation, the second was a narration of the activities/practices of the particular commercial street that had been researched, and the third was a critique of state policy with regard to issues of entrepreneurship and globalisation. The speaker stated that 25 de Marco Street in São Paolo had been a commercial hub from the time of slavery in Brazil. The first vendors were slaves working for their masters in the 19th century. Through this work, they gained some independence of action and asked for freedom. "This changed the base of slavery in Brazil, and finally led, in 1888, to the abolition of slavery." The freed slaves needed a project that would help them to integrate into society, and working on the street selling manufactured goods and providing services proved invaluable in this regard.

Currently in Brazil there are huge numbers of people outside the legal work market. The majority are Black, constituting 58% of the population. They are excluded from the legal system, struggle to find jobs, and face systematic discrimination. They exist without the job rights/protections that were legislated in 1943 as national policy. Working without a licence, in the manner of most of these unregulated street workers, is considered a criminal activity by the state. The state argument banning street vending is that the sellers encroach upon and damage public space; they sell pirate products; they catalyse networks of crime and contraband; their dealings cause shifts and fluctuations in prices; and they are a drain on the state which has to support them when they become old, because during their productive years they don't contribute to the retirement system.

The speaker declared that the state policies are oriented towards urbanisation and the "protection of profits". It has acknowledged that because of globalisation, multinational goods are easily pirated and can be found in street markets. This street, 25 de Marco, was a classic example, a site for witnessing state action against pirate production and redistribution. "Highly prized, well copied, diverse items are cheaply available; these are taken to upmarket locations and retailed at reasonable prices." Nearly 100,000 people negotiate this market daily. At festival times, the numbers are even more staggering. "The street is a confluence of pirate consumption, illegality and repression," according to Silva. She narrated how in July 2004, São Paolo's Civil Guards, firing into the air, cracked down on street sellers. This action was approved by the then-Mayor of the city. Several people were hurt, and arrests were made. The state's action was reported with approval by the media. The street sellers reacted with manifestos and protests, but to no avail.

Meanwhile, the state was also taking notice of the contribution of Chinese products to the Brazilian pirate economy, particularly in the field of toys and electronics. There were a few, largely unsuccessful campaigns informing the public about pirated products and how not to subscribe to these. Pirated goods continued to be cheaply

and easily available and were popular among the working class, "whose pocket decides". There was a collaboration between the state, law enforcement and local owners. A popular Chinese-owned outlet for pirated contraband was raided, and the proprietor arrested. This raid was looked on as a "landmark" in the state's struggle against local piracy networks. In October 2004, the state passed a resolution creating a national council for combating piracy, contraband and crimes against intellectual property. Following this, state policing of the street increased significantly, according to vendors interviewed by the speaker for her research project. "Nothing changed for the shop owners, but everything changed for workers on the street. Sellers had to devise ways to work, as well as run from the police at the same time."

Silva clarified that most sellers were from the north-east of Brazil, from very poor and famine-ridden districts. They came to São Paolo as migrants looking for new opportunities to find earn and try to build a decent life. The literacy rate in this group is very low; children also work, there is a high school dropout rate among teenagers who join the illegal work force; but the speaker found that many still aspired to go to university. Sellers who experienced police violence and had their goods apprehended said there was a definite nexus between shop owners and law enforcement, oriented towards continuously evicting sellers. "When the police come, sellers cover up their goods and flee. Every fifteen minutes they set up goods, dismantle. They say the police treat them like bad elements. Whenever the sellers are too close to shop entrances, the owners call the police. In addition, the state has implemented a plan to "reform" urban public space, under which any illegal constructions by seller on the street will be pulled down," the speaker explained.

She described how in 2003, the Association of Street Sellers of downtown São Paolo passed a manifesto asserting that they had livelihood rights, and this action constituted the beginnings of a new social movement in Brazil, along with the Roofless Movement and the Black Consciousness Movement. The sellers thus continue to pose a new challenge to the urban space of the Brazilian metropolis. Silva pointed to the "rightist policy" of the state and law enforcement, and explained its links to economic history. "During the 1980s, there was massive inflation. The poor had no purchasing power. The 1990s saw a consumption boom, but purchasing power actually did not grow. The working class found itself more and more in debt, while multinational investors profited enormously, particularly corporations dominating the production of electronics, domestic appliances and cars. The total contribution of the working class to the GDP was 45%, which has since declined to 36%...while the fifteen biggest corporations have increased their profits from $9.6 million to $17 million: a jump of almost 73%...The state clearly fights for the interest of a particularly group, and not the majority." At this time, because of the import policy, products from the first world became common to the Brazilian middle class. These products were copied and circulated to poorer countries like Paraguay, whose rich industrial economy had been destroyed by war and political conflict.

Silva claimed that the state tried to define civil society movements, such as the resistance by the street sellers, as problems of public administration, policing and law and order, rather than as a socio-economic/political problem. "The state uses the rhetoric of 'criminalisation' to simplify the question; it does not see this as a chance to bring about social reform. If the problem of piracy is categorised as one of crime, the state's response is one of violence and repression." The way the state deals with the 'problem' of street sellers, while acknowledging this group's contribution to the local economy, is an example of the hypocritical tactic of "supposedly advocating democracy while further marginalising the already excluded". Silva concluded her presentation by asking how "the

great mass of humankind" could achieve the "better quality of life" of the developed world, where wealth and technology were concentrated and from which the global South continued to be excluded.

The discussion following the presentations opened with an interjector reminding Benjamin that after the genocidal event of Partition, the refugees "didn't wait for charity", they created their own spaces, and an "illegal" but flourishing small-scale economy. "The government helped in such rehabilitation, it did not draw a line between the legal and illegal. People in India have inherent skill as entrepreneurs; to survive, they have to produce continually." Doron Ben-Atar remarked that it was heartening to hear that without a large political organisation, people manage to create their own active structures and frames. Just as Benjamin's example of small entrepreneurs taking on the zoning ordinances of New York through the administration — "an orderly bourgeois system putting things in place" — the same element could be present here too. "But this may be a stage, as in a development narrative, before multinationals and state power take over."

Benjamin responded that his first research subjects were Partition refugees in the Bhogal and Jungpura areas of Delhi, and at that time too, they had organised themselves and shaped local government policies. "I am not implying that the government was not involved," he clarified. "My point is that these processes may not seem large or centralised, but they are important because they have managed to change the system of bureaucracy not only through 'manipulation' but also through certain infrastructural procedures."

According to the speaker, settlement systems relied on touts to provide services, and arrange for the "regularisation" of "small" claims onto the land or location that big business is also attempting to capture. "The Delhi pollution case came out of real estate issues, not just purely environmental ones...This is one stage of development. Are we finally going to have multinationals capturing it all, are we moving towards a state where everyone becomes part of a global commodity chain? I dispute that. Take the example of Bangalore. For 45 years we had most of the established IT honchos 'capturing' governance in a very politicised way, to create new forms of institutions which defined the way legality was seen...We need to put faces behind these institutionalised circuits; like Chomsky, ask who is connected to which corporation...Like the second wave of urban reform that is being strongly pushed right now: who is really pushing for it? "

Benjamin declared that this means "coming back to the politics of land". Again citing the example of Bangalore, he pointed out that the government was accused of focusing on IT, and neglecting rural development. "But there is an internal story, linked to how the Congress government was not able to respond to the hydra asserting itself. This terrain is constantly re-politicised, it is a utopia — not in the sense of a heaven without politics, but something which sustains an intensity against Infosys today, tomorrow something else. These politics are alive. The redefinition of property and the definition of the commons is the central issue."

Aditya Nigam asked the speaker to elaborate on the "valorisation" of the ICT4D/e-governance projects: what were the "real compulsions" behind these "shiny new interventions"? Benjamin remarked that we needed to take into account the politics of the digitisation of the land records programme, tenure and property regimes, tenure forms. Locally, there were at least 1,500 forms of recording tenure; the World Bank-sponsored studies had narrowed it down to 256. In addition, there were other governance questions, such as opening up of land acquisition at subsidised rates for ICT, as these were acquired under new regulations, not the old tenure forms. Bangalore's IT corridor, "one-and-a-half times the size of the city of Paris", was made possible because multinational corporations, particularly Intel, bought land cheap."

Nigam reminded Benjamin that "the illegality of the hydra makes it unrepresentable in formal discourse. In that case, what allows it to be represented?" The speaker replied that "illegality" was a grey area and difficult to define. It is constituted by a combination of strategies, "not underground, but under the table", and can be termed "politics by stealth". It is "messy", and "the mess itself safeguards you". Nick Dyer-Witheford asked Benjamin if he made any distinction between "a utopia of the commons" and "a utopia of small-scale capital". Benjamin gave the examples of Bangalore, Brasilia and Cairo as urban sites where "day-to-day political acts were not seen by actors as political", yet these very acts/actors were "managing the system". We have two definite sets of actors: small contractors forming physical/economic territory, and a "porous bureaucracy forming a set of administrative procedures". In India, if we look at refugees from Partition in the 1940s, displaced people/squatters post-Emergency in the 1970s, and migrant flows/slum settlements in the 1980s and 1990s, we can identify the operations of a "politics of stealth", and "sets of bounded concerns" that "might or might not meet the definition of a commons...I don't know," the speaker concluded.

The session's final comment came from Naveeda Khan, who introduced another dimension to the figure of the entrepreneur: the identities of artist/innovator conjoined and actualised in the figure of the "*qabza* agent" that she had encountered during her research on mosque construction in Lahore. "*Qabza* implies the violent appropriation/possession of something, of land, buildings. Is it possible to reconcile the forceful subjectivity of this agent with the picture of the 'stealthy', 'messy', yet somehow emancipatory politics of the 'uncivilised' hydra?" Khan asked.

Media Practice and the Figure of the Pirate

Technology and the Domain of Piracy

Brian Larkin, *Barnard College, New York*

Beyond Representation? The Figure of the Pirate

Lawrence Liang, Ravi Sundaram, Jeebesh Bagchi, *ALF and Sarai/CSDS*

Brian Larkin began his presentation by describing how in 2003, the New York blackout brought everyday life to a standstill in the city. This also happened in the case of Greece. In Nigeria, also, a power cut brings things to a halt – for all of two minutes. Everyday life goes on. Western societies are dependent on flows of power, whereas in Nigeria, the architectonics of built space have prior knowledge of the failure of state infrastructure. Larkin cited the theorist Wolfgang Schivelbush's account of how the coming of the gas lantern transformed daily living. Similarly, the generator dominates Nigerian daily life, while the state has replaced its developmentalist approach with one that supports an individual, competitive urbanism which relies on the manipulation of available infrastructure.

The speaker located piracy in the domain of infrastructure, seeing it as a technical fact, as a practice of everyday life, and as a new mode of temporality. The video shop/video parlour in Nigeria is neither legal nor illegal. It is an infrastructural mechanism, in the sense of infrastructure being the material reality which allows cities to exist. These forms have their own material aesthetics. Technology as a form of property has the capacity to deeply penetrate and transform people's existence. Hence the question should not be about legality/illegality, but about what piracy is able to accomplish, in social/cultural/economic terms.

The speaker briefly described some aspects of the practice of cinema-going in northern Nigeria, that

he has analysed in his research as a media theorist. In African post-colonies like Nigeria, a trip to the cinema has always been "translocal". The local audience was transported into a universe where American realities, Indian emotions and Hong Kong choreography occupied "the fantasy space" of Nigerian screens. But cinema theatres are peculiar kinds of social spaces "marked by a duality of presence and absence, rootedness and transport", "the paradox of travel without movement". They have an ability to destabilise and make mobile people, ideas and commodities. This facilitation of "transnational cultural flows" erodes "the cultural distinctiveness of place". But it can also reaffirm and intensify forms of belonging "by providing a cultural foil against which local religious. ethnic and national identities may be hardened". In addition, through Islamic or Hindu "revitalisation", it can promote the rise of "alternative forms of modernity" that react against Westernisation by providing their own modes of transforming space and people.

The speaker pointed out that scholars/theorists pay attention to cinema-going as a "perceptual practice", but tend to overlook the hermeneutic aspects, the "materiality" of cinema theatres as "specific domains". The experience of cinema and video, though assimilating content that is global, still remains profoundly local. It is necessary to examine the phenomenon of cultural fragments that are surface, concrete, marginal, momentary, because these are "revelatory of the social order". As asserted by theorist Siegfried Kracauer: "The position that an epoch occupies in the historical process can be determined...from an analysis of its unconscious surface-level expressions", which, "by virtue of their unconscious nature, provide unmediated access to the fundamental substance of the state of things".

In Nigeria, "to watch cinema is to travel elsewhere" (Hollywood, India), in contrast to TV, which is state-controlled and only shows Nigerians in a developmentalist, pedagogic framework. Piracy means that Nigerians have access to "elsewhere", to Hindi and Hollywood films within a month after their release in India and the US, rather than two or three years, which was the case with celluloid prints. This has led to new types of leisure and social association, provoking infrastructural innovations and a copy culture which has fostered indigenous creativity.

The speaker described the rise of cinema theatres and video parlours as part of the much wider phenomenon of a "transformative urban modernity" that is "deeply disruptive" of relations of gender, class and individuality. This potential for disruption implies that the evolution of cinema theatres and video parlours as viewing spaces, and the social relations that surrounded them as technological and leisure practices, was the outcome of a "negotiation" among the built space, "the apparatus itself". The formal and informal regulation of cinema and video — where these were located, who could attend and what films could be shown — was a contested practice "whereby a transnational phenomenon was constituted within local social, ethnic and gender norms".

According to Larkin, piracy represents the potential of technologies of reproduction, the ability to store, reproduce and retrieve data, specially when it operates without the legal frameworks that limit their application. It depends heavily on the flow of media from official, highly regulated forms of trade, but then develops its own structures of reproduction and distribution external and internal to the state economy. "The structural focus on legal issues tends to obscure the mediating nature of infrastructure itself." In the case of Nigeria, this is seen most strikingly in the rise of a new video industry that makes feature-length films for domestic video consumption. This new industry has pioneered new film genres and generated an entirely novel mode of reproduction and distribution that uses the capital, equipment, personnel and distribution networks of pirate media. These Nigerian videos are a legitimate media form that could not exist without the

infrastructure created by its illegitimate double, pirate media.

Larkin stated that the video parlour is an important node in this context, and has weakened media control by cinema distributors. Kracaeur speaks of cinema-going practice as a modern expression of the "alienating commodity form". The video parlour, run by Lebanese entrepreneurs, led to new modes of social association in Nigeria, operating out of locality shops and homes. The sense of awe associated with going to the cinema is absent, there is no arabesque décor; the video parlour is a "non-place". It blurs the lines between the private and the public, the intimate and distant, and between men and women, who mix freely in these video parlours (which earlier showed pornography). One by one the cinema halls turned from film to video projection. Running a video parlour is a small step from "first publicness".

The video parlour is also an important node for the distribution of Nigerian videos, feature-length films shot and distributed on video; there are about 800 releases a year in English, Yoruba and Hausa, Larkin clarified. Hausa films, popular in Northern Nigeria, have aesthetic content affected by copy culture. Hausa films are inspired by Hindi films in style and genre. There are three reasons for the emergence of this indigenous form: the emergence of cheap technology; the presence of trained, but underfunded, television staff; and the rise of Hausa romantic literature. The first direct imitation in terms of genre, from Hindi to Hausa, took place in 1977, and today Hausa films don't sell without song and dance sequences. "Hausa films, with their emphasis on romantic love, a staple of Hindi films, are completely different from south Nigerian English and Yoruba films, which depict sexuality and traditional practices such as witchcraft, more openly," Larkin declared.

Such a blurring of the lines that separate the legal from the illegal is a common experience for urban Africans, who have been "progressively disembodied" from the infrastructures linking them to the official world economy, and instead have poured energy into developing informal networks — equally global — that "facilitate traffic in economic and cultural goods outside the established institutions of world trade". Piracy has not only enabled the Nigerian community to experience the world of Indian and English cinema, but also provided the infrastructure and cultural content that formed the genesis of Nigerian films, the speaker affirmed.

He added that "all acts of copying are acts of translation". This perspective on piracy is important to keep in mind with regard to the circulation of a particular culture in Nigeria that derives from Hindi films: for instance *bandiri* music, Sufi songs in praise of the Prophet, set to Hindi film tunes. In this mode, words are selected that sound like the Hindi originals. There is a spiritual current to many Hindi film songs (based on *qawwali*) which is resacralised in Nigeria. Piracy can also be thought of as an informal archive, and as an "an infrastructure of reproduction, where legal and illegal meet".

Larkin concluded that there is an "ontological problem" with the word 'piracy', in the sense that if an act of copying generates profit, it is classed as "pirate", but not otherwise.

Ravi Sundaram initiated the joint second presentation by stating that a few years ago we had an inherited legacy of work on the public domain, media law, the development of media industry (e.g., the work of Peter Manuel), classical notions of 'the public' and sovereignty. There was an increasing discomfort with these notions because of internal contradictions and "a lack of fit". There was a need to make sense of the "temporal compression" of the 1990s. The Publics and Practices in the History of the Present (PPHP) project at Sarai focused on exploring the history of contemporary media practices in Delhi, in which piracy plays an important part. It is important to open up more than just an "anthropological understanding of commodity".

The public, circulation, and the "almost compulsory discourse of resistance" needs to be re-examined.

Jeebesh Bagchi then presented portions of the hypertextual artwork, 'The Network of No-Des', produced in the Sarai Media Lab and exhibited at the digital arts festival ISEA 2004 in Helsinki. This artwork opened with the depiction of a news clipping, "Lightning Raid in Basement". Bagchi read excerpts from the fieldwork of Sarai's PPHP researchers Rakesh Singh and Bhagwati Prasad, on their experience of a raid in New Delhi's Palika Bazaar, a popular hub of pirated media commodities, and the everyday presence of pirated commodities in Madipur, an industrial/resettlement village in West Delhi; and the researcher's accounts of the dispersed nature of media production and circulation in Delhi. Bagchi then showed a clip from "Crime Patrol", a Sony TV programme which sensationalised the figure of the 'media pirate'. He also gave an account of the petition in the Delhi High Court by giant media conglomerates Disney, TimeWarner, etc., against Lamhe Video Parlour, a small local business. Bagchi spoke about the phenomenon of "windowing", mentioned in the affidavit, and the crisis of the "window" in anti-piracy discourse. A film has only a small release window in which to recoup most of its profits, and if 'pirate' media circulates before or during this time period, "even a single sale by Mr. Gupta [owner of Lamhe] would cause irreparable damage to the plaintiffs", according to the petition.

Lawrence Liang spoke about his work with Alternative Law Forum. He said their project consisted of, first, understanding the social world that they inhabited; and second, trying to translate Creative Commons and other licences into the Indian context. How do these worlds meet? According to Liang, the initial mistake they made was to translate terms directly from one to the other, from "the normative world of the global digital commons", into the "messy reality of the Indian pirate markets". Pirate production of commodities and media objects fits neither a narrative of resistance nor normative critique; nor does piracy seem to fit received models of creativity or innovation. The problem of representing the pirate lies firstly in that it is narrated along the lines of the public domain. More often than not, it is used as "a narrative alternative to the expansionary terms of intellectual property rights". What do particular ideas of the public domain do to the social world? Is the public domain the only way of charting out intellectual property conflicts? And how does the pirate fit into public domain categories?

Liang asserted that the narrative accounts of the figure of the pirate either make him invisible or hypervisible, as in media accounts of raids, seizure/confiscation of equipment, or tales of courtroom drama in cases of alleged copyright infringements. There are other forms of representation, like the "embarrassed acknowledgement" of piracy, specially when referring to Asian pirates, the "uncomfortable" account of the pirate who can subversive in relation to intellectual property; there is also the pirate as the "redemptive" figure, the "transformative author" whose actions are mapped along the axis of creativity. Here the pirate is narrated in terms of the recipient of the information, the one who transforms or creates information and aids in the expansion of further creativity. But such an acceptance problematises the figure of the Asian pirate who functions as a "mere copy shop", does not add value to the information or contribute to the public domain; and is termed completely illegal. By the same logic, the Internet would render the ordinary user illegal; but here we can locate a crucial split in the interpretation of P2P networking. It is seen as an act of creation, remixing of culture, adding to the public domain, and is an act of resistance; but the Asian form of piracy is seen as a mere act of imitation. Thus, the "inclusive" public domain is also exclusionary, and polices/renders illegitimate certain groups of "other" citizens and their "creative" acts.

Assessed by these parameters, the pirate is no longer just a legal subject, Liang declared. Piracy

is "irretrievably tainted" with its commercial nature, which deals with pleasure and entertainment, a world outside the developmentalist paradigm. Lawrence Lessig redeems the pirate by talking of four kinds of peer-to-peer piracy in *Free Culture*. But he denounces the figure of the "Asian pirate", the non-creative "copier". Liang contrasted this to Doron Ben-Atar's historical study of early US industrialisation, which found that all of this development was violative of copyright, not just internationally, but also in terms of national laws. And all of the crucial early technological innovation, sponsored and supported by the state, was unapologetically "pirate".

The speaker pointed out that there is a great deal of anxiety around piracy. "Our cities are used to being narrated as illegal". The anxiety around "illegality" increases with the coming of the Internet, "when the narration of 'otherness' comes home, with Napster and 'piracy' in the bedroom". The Asian "other" becomes crucial to narrate out and narrate back to the US citizen/consumer. Thus, in the category of the public domain is created the myth of "creativity", of innovation and progress – which unites copyright and copyleft, which produces "counterfactuals" to copyright. But what does this do to the figure of the Asian pirate? How do we extend our understanding of "creativity" via the figure of the pirate? Can we move beyond the exclusionary/inclusionary binary that this generates? Liang suggested that one alternative is the assumption of creativity as progress, and taking the Lessig approach of the user as producer, linked to the notion of citizen as subject. This is an "unmarked, invisible citizenship"; and as a discursive position, "it cannot disavow its markers". The second alternative is to destabilise the notion of creativity as progress. Creativity as a public good is a relatively new idea.

Bagchi then indicated two historical accounts. One was Peter Linebaugh's *Many-Headed Hydra*, which goes back to the 16th and 17th-century Atlantic world. The other was the work of Jacques Rancière, including *Night of Labour* and *The Philosopher and His Poor*. In these accounts, there is record of censure for "the irrational democracy of writing", turning, "decent workers" into "thieves and impostors". Rancière indicates a "simultaneous discourse of homage and contempt" to construct an idea of the labouring poor. Ravi Sundaram concluded the presentation, stating that research on piracy can be seen as an enquiry into contemporary capital, moving away from earlier legacies of Marxist, anthropological and counter-culture analyses. Contemporary piracy can be seen as an "immaterial unhinging", and the "raising of ordinary life into the conflictual". Pirate culture is a "productive sphere of disorder, a contagion of the ordinary" because of its non-redemptive nature.

In the discussion that followed, McKenzie Wark asked why the "public" should not be bracketed off altogether, and the figure of the pirate subjected to a stronger question. Property may not be necessary to this interrogation, eliding the central 'property question' that had remained the key focus from Marx's critique onwards. "Piracy should be seen as a form of desire, with the proviso that culture belongs to people collectively as a right." Then the figure of the pirate would be the figure of the "repossessor". Prabhu Mohapatra, Delhi University, asked why, instead of "value addition", we didn't think in terms of "value subtraction" due to a lack of circulation. "Why is pure circulation not valuable? Money is an abstraction, which increases in value through pure circulation. From this perspective, pirates should then be thought of as 'proliferators', as aiding commodity circulation, rather than being anti-commodity." Awadhendra Sharan commented that if piracy is to be thought of in terms of infrastructure, there is also other insistently "illegal" infrastructure such as slums, etc., which needs to be taken into account. How is this issue to be dealt with? Larkin replied that the issue of circulation is critical. "Piracy" is a shifting definition, and there is increasing variability in what can be labelled "pirate". We need to look at

"locality" – how piracy materialises in local domains. Danny Butt spoke of the concept of "fecundity" influencing the discourse of piracy; of piracy as being excessive and out of control. The discourse against immigrants was based on similar parameters. The notion of piracy is "deeply representational", and this aspect needs to be challenged.

Sundaram invoked the current discourse about piracy, stating that Larkin's work can be read as a theory, and as a history, of industrialisation; as a history of citizenship; and it can also be broken up as an object into practices and constellations. Seen through these lenses, the figure of the pirate connects with the work Solomon Bejamin is doing, and with the work of Partha Chatterjee on political society. It cannot be slotted within the counter-cultural niche of Wark's "repossessor".

Bagchi, addressing Mohapatra's question, said that piracy could be seen as commodities travelling, "unhinged" from property. Till the 1980s, the state was paternalistic and provided whatever limited access was available. This completely changes in the 1990s, with states addressing an "end user" who is not a "citizen". It is a deeply unstable category, leading to a "defiant access", as the state is an enforcer against access. Earlier categories are not helping us to understand the phenomenon at this point. Liang confirmed that we are moving away from any attempt at a "normative" account of piracy. Sibaji Bandyopadhyay brought up the aspect of "an anxiety about creativity", and that research on piracy seemed anxious to go beyond, to transcend anxiety. "Every signifier will have a dangerous supplement, so it is impossible to go beyond anxiety. Why don't you just drop the category of culture for good?"

Liang acknowledged this view, adding that one could not deny a conscious wish as well to return anxiety to creativity and culture, because "every act of creativity, in any domain, will have contests and trespasses".

Open Round Table

Sudhir Krishnaswamy initiated the final round of discussion by reiterating what Brian Larkin had described: that piracy had a technical as well as a legal side, and that piracy involved various actors in a complex and unequal relationship. The political and moral economy of piracy was paradoxical: for example, a farmer with five acres of land outside Bangalore had a definite relationship to the area's giant IT companies. Lawrence Liang remarked that there was the need to tell a more "careful" story about piracy; Solomon Benjamin commented that there was a need to "tell the messy story, not the normative one". Krishnaswamy added that any inquiry into piracy would necessarily be conditioned by the interrogator's disciplinary focus, as practice influenced interpretation. He identified "anxiety" as the central theme with regard to piracy. If the commons/public domain provides us with an "inadequate" moral economy for piracy, what principles can we develop regarding the phenomenon?

Ravi Sundaram said his own entry point into the debate was via thinking about broader categories of change and conflict through which the public domain has been configured. Where do categories of conflict/representation that do not follow classic tropes of the public domain, intersect? When the debate continually focuses on theorists like Habermas, etc., on the coming of the Internet, on the coming of biotechnology, "how do we speak to people who do not enter these worlds? Through what modes can their issues be represented and narrated?" We need to work through these categories. Meanwhile, the modernist elite is preoccupied with various kinds of crises: globalisation, war, the welfare state, nationalism, along with challenges to the established idea of the public, challenges to the established notions of property.

John Frow commented that he wanted to defend his notion of the public domain against Liang's

critique. According to Frow, the public domain debate should not be structured around the categories of "legal" and "illegal", which imposed a narrow definition within the juridical framework. Public domain materials are "non-rivalrous" in principle, can be commonly used, cannot be claimed. Piracy contributes to the public domain; technologies return materials to the public domain, in our age of digitally-enabled dissemination. Piracy does not exist outside the category of property; in some sense it is impossible to think of anything that is not property. Like language, like nature, public domain materials are a common heritage of mankind, are "universal" property. Through piracy, "opportunistic" small capital seeks a "parasitic" entry point into the contest with large capital; pirates occupy space not previously occupied in the public domain. But we have to keep in mind the crucial distinction between two different kinds of property: the public domain mode, which is non-exclusive, non-claimed; and the "deprivatory".

An interjector pointed out that in its association with illegality, there was something "seductive" about piracy, the nature of the word itself was anti-establishment, people had a "clear yet unconscious attraction" towards it. Dorothy Kidd remarked that legal FM radio was "no fun" in the mind of the general public, as compared to pirate radio stations. "Of course piracy is illegal, but is it dishonest?" As compared to plagiarism, there is nothing dishonest about what the pirate is doing. The pirate is not cheating the customer: he is providing a service. Another interjector suggested that piracy was a kind of "anti-ethic" to globalisation, and did not have to do with the pirate's own pleasure and profit. Different kinds of cultural artefacts are all equally hacked into – art, literature, software.

Peter Jaszi commented that libraries in the US acquire huge masses of cultural material as part of their "legitimate" function, and make these "freely" and "promiscuously" available. They have no contract or policy of compensating authors for the use of their works. Libraries perform this function under law, on the basis of a kind of collective institutional prestige that makes their practices difficult to attack. This is clearly a form of institutionalised piracy and information circulation. At the margins are a "huge variety of mediating mechanisms" to pull materials from exclusivity to non-exclusivity. These are as transgressive as the activities of any pirate.

Danny Butt identified a "cultural disjunctive" emerging in the discussion, with regard to the normative "moral" in the context of piracy. There was a need to examine the relationship between economic and economic sociology. "What do economic actors 'actually' do, as compared to what they should 'theoretically' do/be? There seems to be the desire for some sort of synthesis, which is quite specific: 'Can we actually do this?' But there is also a differential consciousness, and we may not leave with a shared language. However, even if something does not relate to me, as long as it relates to my discourse, there is a possibility of understanding. Who will speak is less important than who will listen."

Shuddhabrata Sengupta also brought up the point of "normativity", describing it as an important question that we should not let slip away. There is the danger of an incomplete description if we do not interrogate "normativity". We have erected a cultural typology, of culture and counter-culture, and piracy provides various "counter" pleasures: a disinterested altruism, the pleasure of copying, the pleasure of sharing material, etc. We should not dismiss the idea of creativity that comes from the pirate mode, nor dismiss the "fecundity" that characterises such creation.

Nick Dyer-Witheford remarked that from the conference he would take away the project of mapping the circuit of the commons. "We have made an inventory of different kinds of commons practices – radio, software, library, music, video, etc. We have to model/diagram what these commons have in common, so to speak, the different ways of productive practice/social

organisation, in the manner that Marx mapped the circuit of capital—commodity, money, means of production." We need to combine the commons regimes into a self-expanding domain that is not subject to the "tragedy" of the commons. The speaker also pointed to the "cornucopia" of the commons, its capacity to grow and displace the circuits of capital.

Avinash Jha turned the discussion to the area of traditional knowledge in the context of IP regimes. He stated that with regard to biotechnology and biopiracy, the key unit, the gene, was understood in terms of its potential to provide information that could be developed for commercial use. In the digital era, information was also defined in terms of reproduction. Kumar felt we should address questions related to knowledge production more directly, examine the "messy" grounds of piracy operations. The terms 'knowledge' and 'information' were being used interchangeably, but there was a difference. Copy cultures, that reproduced information, "are not driven by a desire to copy but by a whole host of other desires. Since we are consumers of information, we need a critique of these desires."

Nitin Govil remarked that the public domain was most often seen as a spatial category, but it was also a temporal one and operated on the principle of return. "However, this return is not automatic." It is initiated through claims, and deployed through pedagogy and sets of normativities. Do all of these have to be under a general umbrella? Are these the same across all the different fields: biodiversity, entertainment media, information, software? What are the factors that these fields do not have in common?

McKenzie Wark stated that the critique of property is not an avant garde notion. "Information is always escaping from categories of property." The four 'Ps' have to be taken into account, if the IP debate is to be understood: "public", "private", "property" and "pirate". We also should not hesitate to confront the "granularity" of how information moves. "You have to think without the box, not just outside the box." With regard to the public domain, he felt Habermas' account was "bad history", and that we have to move past this discourse "just as we moved past the discourse of phlogiston".

Dorothy Kidd argued that the world "was fated to live in crisis" today, since capitalism was fully invested in profiteering from information technology. She said she never equated the public with the commons, which has always existed on the margins of capital. The "public" is a "cypher", a productive space but not the same as the commons. All societies have communities with histories of transgressive practices, we need to examine these. We need to ask how we can "extend the ways in which people are extending communications".

Rana Dasgupta commented on the "sexiness" of the pirate, the outsider figure that had a grip on the popular imagination. Movies avidly project the mafiosi, terrorists, spies, etc. In the 19th century, Romantic poets were fascinated by savages, gypsies. "This fascination included both nostalgia and pathos. For instance, Gauguin painted Tahitian idylls while supervising slave plantations in Martinique. Our emotional investment in the 'pirate' needs to be investigated, we should be suspicious of all allegorising of this figure through moral tropes. We need neutrality; yet at the same time we need to refuse to homogenise/render normative the 'messiness' of piracy." Such a reduction, through simple description, would take away the complex dimensions of the phenomenon, would ensure it is transparent, ready to be taken over.

Armin Medosch commented that values and ethics as parameters of the IP debate have become "boring", and we have to invent a new language to understand piracy. He also warned against romanticising the pirate, as this community could be "parasitic". Vivek Narayanan, Sarai, stated that the notion of copying and replication in the act of piracy often leads to innovation and sharp creative insights. For instance, Charles Mingus

developed his own unique jazz style by copying very carefully, till he made a mistake in his playing, but instead of eradicating the mistake, he paid particular attention to it and developed it into its own form. Copying is essential: it is bad poets who say, "I won't read." Good poets read, and acknowledge their sources/inspirations. Narayanan said that on the one hand he personally wanted to hold on to the idea of the author; but on the other hand, he also wanted to see the development of an alternative genealogy: not just the dispersed authorship of collaboration, but also through distribution mechanisms.

Brian Larkin returned the discussion to the "preservation of messiness" and asked that this be lifted to the conceptual level. "It is not a factor of getting piracy/public domain onto the bench and figuring it out, deciding and defining. Voices are embedded in different cultures, different cultural infrastructures...If you ask who is right, you are wrong. It is time to shift from definitions of what piracy and the public domain, etc., are, time to ask instead what we want these to be. The effort is to create a public domain based on citizen's rights, community building and social justice."

Magna Carta and the Commons

Peter Linebaugh, *University of Toledo, Toledo*

The speaker described the Magna Carta as a "lost but extraordinary document" which "holds a constitutional key to the future of humanity insofar as it provides protections for the whole earth's commons". At best, the Magna Carta has been ignored as a medieval document of little relevance to the modern world; at worst, it has been derided as "a false façade of liberal intention by Anglo imperialism". Partly as a result of this neglect, fundamental protections against tyranny and aggression, such as habeas corpus, trial by jury, prohibition of torture, and due process of law, have been eroded. These cannot be restored without the recovery of the Magna Carta's entire Charter of Liberty.

The speaker identified three global trends: "woodlands are being destroyed in favour of commercial profit; petroleum products are substituted as the base commodity of human reproduction and world economic development; and commoners are expropriated". The terror, dislocation, separation, poverty and pollution associated with petroleum extraction can be termed "petro-violence"; and the United States "has intensified this pattern with war."

Linebaugh stated that the Norman Conquest in 1066 disrupted the customs of the forest which had prevailed from Anglo-Saxon times, when wooded commons were owned by one person but used by others, the commoners. Usually the soil belonged to the lord while grazing rights belonged to the commoners, and the trees to either. Wood was the source of energy. "Whole towns were timber-framed." Wooded pasture was a human creation, the result of centuries of accumulated woodsmanship. Under William and the Normans, the forest became a legal rather than a physical entity. The kind reserved it

exclusively for sport. The forest became the supreme status symbol of the king, from which he could give presents of timber and game. For Christmas dinner in 1251, Henry III had "430 red deer, 200 fallow deer, 200 roe deer, 1300 hares, 450 rabbits, 2100 partridges, 290 pheasants, 395 swans, 115 cranes, 400 tame pigs, 70 pork brawns, 7000 hens, 120 peafowl, 80 salmon, and lampreys without number".

In July 1203, at the height of the crisis in Normandy, King John instructed his chief forester, Hugh de Neville, "to make our profit by selling woods and demising assarts". The king rewarded his aristocratic followers with various endowments. The forests were enclosed; most forests were also commons, and had commons-rights dating from before they had been declared forests. Hence, the demand to disafforest in Chapter 47 of the Magna Carta.

The Magna Carta was first issued by King John in 1215 AD, under pressure from his barons. However, no sooner had he signed it than he renounced it, getting the Pope to annul it, and plunging England into civil war. At the end of this war, the barons rewrote the Magna Carta, adding the "Charter of the Forest"'. This gave several rights to the public. They were entitled to take fuel, food and medicinal plants from the forest, and could use its resources for shelter, tools, clothing. The charter provides for "widow's estovers", granting women the right to sustain themselves through using materials from the commons. Linebaugh stated that these were the same rights that the Nobel Peace Prize laureate Wangari Maathai had been struggling for in Africa. The struggle was a similar one for the women of the Chipko momement, who like other women's groups were participating in an effort to re-common resources that had been privatised, preyed upon and ruthlessly decimated for profit. Chapters 47 and 48 refer to the common rights of the forest.

In the 1600s, the rising bourgeoisie in England claimed these forests as their own, but still needed the Magna Carta in order to limit the power of the king. Hence during the course of the English civil war and the Glorious Revolution, the "Charter of the Forest" was deleted and the Star Chamber, which adjudicated disputes over the commons, was abolished.

According to the speaker, there is a narrow, conservative interpretation of the Magna Carta and a more radical one that concerns individual citizens and commoners. "The former, inscribed on a granite plinth by the American Bar Association, stresses 'freedom under law'; the latter stresses authority under law: it extends protections from state power and, deeply rooted in the experiences of working people, offers rights of subsistence to the poor". Prof Linebaugh linked this to the original document's 63 chapters of liberties to the "freemen of England", which protected the interests of the Church, the feudal aristocracy, the merchants, Jews; yet through provisions that are often overlooked, it assumed a commons, and acknowledged the lives of the commoners. Habeas corpus, prohibition of torture, trial by jury and the rule of law are derived from Chapter 39. The document made provision for the emancipation of women, put a stop to the robberies of petty tyrants, and opposed privatisation of common resources.

The "hero" and "mythmaker" of Chapter 39 was Edward Coke, dismissed as Chief Justice of the King's Bench and imprisoned in the Tower. His interpretation took on "an Atlantic dimension" after Coke helped to draft the royal charter of the Virginia Company in 1606. Other royal charters establishing English colonies in America also alluded to the Magna Carta (Massachusetts in 1629, Maryland in 1632, Maine in 1639, Connecticut in 1662, Rhode Island in 1663). While those colonies used the Magna Carta against the authority of the crown, they ignored its forest

provisions altogether when it came to their own voracious intrusions into the woodlands of the Indigenous peoples.

Linebaugh wove together a fascinating tale of how the Magna Carta had been used and appropriated by various actors in history. Describing the document as a metaphor of liberty, he narrated how the freedoms it articulated had been used by slaves in the US to make claims for their emancipation, and also pointed out that George Bush invokes the same tropes from the Magna Carta to justify the current US military aggression in various sectors of the globe. The speaker identified two reasons for the continued importance of the Magna Carta. First, after the 11 September 2001 attack on the US by Osama bin Laden, George Bush maintained that America was fighting for "freedom". According to the US President, this meant freedom of religion and freedom of speech, and nothing more. He did not mentions the other freedoms listed in the Magna Carta: freedom from want and freedom from fear. Linebaugh said that this failure to remember the other key freedoms has, in the US, led to the torture at Guantanamo Bay, to arrest without cause, and to the suspension of *habeas corpus*. Our failure to remember the complete terms of the Magna Carta has also meant that we have failed to remember that freedom and the due process of law and fair trial go hand in hand. Second, the recovery of the Magna Carta means the recovery of the Commons. In 1994, the Indigenous people of the Chiapas region of Mexico rose in revolt against the government after it destroyed communal village lands. Commander Marcos, the leader of the rebels, urged them to "remember the Magna Carta".

Linebaugh described how the Levellers in the 17th century relied upon the Magna Carta to assert the rights of peasants; and how in Boston, at the time of American Revolution, the Magna Carta was being reprinted and used to claim a freedom to trade, even though in the same month of the reprinting, a war was waged on Indigenous fishing communities. The speaker recounted how a slave whitened his face with flour and approached a magistrate at night in order to get a *habeas corpus* issued to save a fellow slave from being sold. He spoke of how the working class used the Magna Carta to stake their claims, preparing the way for the Chartist and Abolitionist movements. The African American leader W.E.B Du Bois also used the trope of the commons in his rooting of the entire discussion of human rights in material realities. Writing in full cognisance of English history, he observed that the federal government "continually casts its influence with imperial aggression throughout the world". And even when a strong political leader is able to "make some start toward preservation of natural resources and their restoration to the mass of people", this "great search for common ground" does not last long.

The lecture concluded with a detailed analysis of a slide depicting a mural in a courthouse in Cleveland, Ohio. The left half of the mural depicts workers awaiting the Magna Carta, and the right half depicts kings, barons and bishops conspiring to withhold the charter from the people. Linebaugh stated emphatically that to forget this document would amount to "delivering it to the mercies of the powers that be"; and that the battle for the commons today was similar to the battle for the commons in the past.

"Today, facing the unchecked power of empire, we may go into the woods to fetch the Magna Carta completely...While the Magna Carta is singular, an English peculiarity, its story is one of oppression, rebellion and betrayal. It has become a story with global significance. We are commoners looking at it from the outside. We have seen its history, from the robber barons who became chivalric knights who became law lords who became 'founding fathers'. Having studied

their doings in the forest, in Palestine, in the law courts, on the frontier, and now in Iraq, we have learnt to be suspicious..."

The speaker concluded that the Magna Carta "awaits further interrogation", and "may yield us both radical and restorative sustenance".

Free Media Lounge

The Free Media Lounge, organised/produced by Sarai-CSDS, was a large digital space adjacent to the conference hall. It presented live audio streaming of the conference proceedings for all three days, provided Internet connections and showcased creative work in new media formats, on the theme of emerging conflicts around intellectual property in the domain of cultural production. It hosted a series of three workshops by programmers and media practitioners. The focus was on describing open source platforms which enable users to experiment with a range of media to create their own works. The Free Media Lounge also had tables displaying various Sarai digital works and print publications.

ApnaOpus

Silvan Zurbruegg and Victoria Donkersloot

Victoria Donkersloot and Silvan Zurbruegg presented their work on ApnaOpus, a digital platform created for Sarai's Cybermohalla project (http://www.sarai.net/cybermohalla/cybermohalla.htm). ApnaOpus is a development of the OPUS project (http://www.opuscommons.net/templates/doc/record/html) created in the Sarai Media Lab, which sought to push free software principles (download-modify-redistribute) in the realm of cultural production.

OPUS is an online space for people, machines and codes to share, create and transform images, sounds, videos and texts. It is an attempt to create a digital commons in culture, enabling one to view, create and exhibit media objects (video, audio, still images, html and text) and make modifications on work done by others, in the spirit of collaboration and the sharing of creativity. It is an environment in which each viewer/user is also invited to be a producer, and it is also a means for producers to work together to shape new content. Each media object archived, exhibited and made available for transformation within OPUS carries with it data that can identify all those who have worked on it. Thus, it also preserves the identity of authors/creators (no matter how big or small their contribution may be) at each stage of a work's evolution. The basic idea behind OPUS, inspired by the free software movement, is to create an online community of practitioners and artists willing to work outside the increasing global domination of intellectual property regimes in cultural production.

The ApnaOpus ("Our Own Opus") project is an attempt to translate alternative protocols for networked art practice to the context and needs of Cybermohalla practitioners. The Cybermohalla project is an initiative dedicated towards creative interventions using free and open source software tools, digital culture and the Internet in non-elite neighbourhoods of Delhi. One can see the Cybermohalla project as an experiment to engage 'tactically' with media technologies, digital art practice and software, to create multiple local media contexts emerging within the larger media network fostered by the Internet. It can be seen as a critique of the technological imagination and the dominant mediascape, and a counter-strategy committed to access, sharing and democratic collaboration. It is also an example of art practice grounded in local history, experiences, modes of expression and communal creativity. This project generates a long-term creative/interpretative context for digital reflection on the urban condition, through a sustained engagement with working-class young people associated with three locality media labs, and an R&D lab seeded by Sarai in collaboration with Ankur, an NGO working in the field of alternatives in education. The labs, equipped with free software-enabled computers, are situated in underserved areas of Delhi.

ApnaOpus seeks to develop and customise OPUS in a direction where it becomes easy to use, create and share digital art works within the context of the activities of the Cybermohalla project. OPUS

was always meant to act as a community-building resource, and equally, to function as an online space for making and viewing digital objects in various media. The ApnaOpus project takes the principles of OPUS forward into the actual life of a real offline community. It requires customisation and development of the software, which also involves transference of the 'ownership' system, from designers, developers and programmers to users, hence the 'Apna' ("Our Own") in ApnaOpus.

Like OPUS itself, ApnaOpus is a peer-to-peer filesharing tool with the additional capacity to enable the annotation of shared contents. It includes a wiki (http://apnaopus.var.cc). The project entails a thorough overhaul of the interface of the OPUS system, making it compatible and responsive to the needs of the Cybermohalla practitioners, enabling online creative sharing and the construction of their "own" digital commons. The project will mandate detailed documentation through what the Cybermohalla practitioners call 'Scratch' Books: a combination of field notes, annals, journals, manuals, annotations, commentaries, reflections, indexes, scrapbooks. These are layered and accretive, densely inscribed with the texture of daily life and local imperatives.

Victoria Donkersloot described her field research at the R&D Lab, undertaken to get a perspective on the internal processes regarding the production of digital content. Her focus was the observation of archiving and file-sharing practices in order to create a model that could be mapped to a software tool. She stated that her goals as an interface designer were to create a navigation system that was clear, easy to understand and consistent; and to analyse how users currently shared and archived digital objects. She clarified that the emphasis was not on the accumulation of files, but on the sharing of the ideas embedded within the objects. For instance, a Cybermohalla practitioner had uploaded a picture of a bike on a parking spot for cars, accompanied by a text "I am not less". On seeing the image, someone else might decide to write a text on the idea of "I am not less". A third person might like the specific lighting technique used in the photo and would try to emulate this in his/her own photos. So the relationship between the users was based on reflecting upon what was offered.

Donkersloot asserted that interviewing and observing the practitioners had made her aware of the strong sense of sharing, and the constant flow of works created in reaction to other works. People constantly encouraged each other to reflect upon made objects, older members of the labs encouraging the newer ones. This was done at meetings but also in registers, notebooks of photos, text and sound. All entries are logged/archived in factual detail, numbered in columns with date, place, time, etc., but the reflective/metaphorical mode is also encouraged.

The speaker clarified that initially she wanted to copy the factual way of archiving. She tried to embed this into the interface design. In the upload menu, after fetching an object from the PC, the user was asked to place it, in a similar way as when one saves a file into a folder on the PC. This mandatory file structure mimicked the analog way of archiving. However, she later redesigned the entire structure to accommodate the practitioners' texts, because "factual data is less important than reflective data". She realised that the initial structure "pushed people too much to think of how to archive correctly. People are allowed to think about archiving, but this should have second priority." The new structure's upload menu supported the mode of reflection upon content. It did not ask for factual details but asked the user to think how his/her work related to that of others. Instead of asking the user for a description of his/her work, the question is "What ideas would you like to share about your digital object?"

Describing the technical parameters of ApnaOpus, Silvan Zurbruegg remarked that the strength of OPUS was its concept of "rescension", where any contributed file could be seen as a base for

another person to build upon. “This centralised platform provided for the record of genealogies, and a meta-level that allowed for the creation of themes and projects in order to organise the files in a context-specific manner.” However, uploading large files from anywhere to the central OPUS server was complicated. In addition, “the transparency and usability of the platform got clouded due to a fancy but cryptic interface, and an ambiguity between the coexistent genealogical and contextual interrelations”.

The technical experiment in the area of P2P filesharing was through BitTorrent, “since it seemed to be a good compromise between the decentralisation of file exchange, but with a central meeting point (the tracker site) to get information about what was available in the network”. Zurbruegg explained that a peculiar feature of the BitTorrent protocol was “its use of a meta-file that coexists with the distinct data source. This meta-file is used to inform a client about where to ask for peers in order to request a file from the network”. This place is called the tracker. “But unfortunately, a classical BitTorrent tracker knows nothing more than statistical information about a file. It knows just enough to ensure the file’s exchangeability. The use of a meta-file makes it possible to bridge the gaps, to the Web or e-mail, to broaden the access to files from within the network.”

Zurbruegg clarified that the importance of meta-data for OPUS as well as ApnaOpus led to the decision to “build a meta-info layer for the existing BitTorrent meta-file structure. By means of this layer, a BitTorrent tracker then not only knows about what files it is dealing with, but moreover, what context is related to those files. The meta-data set consists of basic parameters such as title, description, information about the author and contributor, links, a folder (category) field and a field to store relations to other files. When a client is adding a new resource (file), it submits all the information to the tracker, which in turn relays information about the new addition through its Web interface.

A visitor to the tracker site immediately sees the contextual frame of the newly added file, and not just information about file name, file size and file type. The tracker also becomes searchable according to the meta-info parameters, and one can subscribe to search queries in order to stay informed about new additions according to the requested parameters.”

The central feature of ApnaOpus is file-sharing according to contextual information that is submitted. This does not detract from the concept of genealogy, which is boosted through the relation parameter “that allows for interrelating to any resource available on a tracker, without explicitly tracking a parent-child state. Therefore, the interrelation became flatter and more wiki-like, rather than nested and genealogical.”

Another emphasis is on the concept of folders or categories.”This parameter is derived directly from the practice at the R&D Lab, that uses a folder structure on the file system to organise all the different types of files circulating around the projects and activities. The folder is used metaphorically, to categorise files according to projects or topics.”

Zurbruegg concluded that the “intersection of extending BitTorrent and using its premises, along with the concept of an interface that emerged from cognitions about the workflow of specific practitioner groups, combined with features from OPUS, has evolved into Version 0.3, the current form of ApnaOpus”.

He completed the session with a demonstration of file exchange from one computer to the other, within the room’s network.

Monica Narula facilitated the discussion that followed, explaining the essential details of contexts and practices of Cybermohalla, and the experiences with OPUS. Interjectors asked if ApnaOpus had backup features, about its advantages and limitations, whether it would run on Windows, etc.

dyne:bolic

Denis Rojo, a.k.a. Jaromil

Jaromil explained that dyne:bolic is a live bootable CD, a practical tool for multimedia production, created to meet the needs of media activists, artists and practitioners interested in realising a full multimedia studio. "It is part of a grassroots effort to spread free software in the spirit of sharing information and creative collaboration. It is handcrafted by experienced software artisans who have been making their own applications for the past many years; dyne:bolic is not based on any other distribution."

This operating system works directly from the CD without the need to install or change anything on the hard disk. It is user-friendly, recognises hardware devices (sound, video, firewire and USB) and offers a vast range of software for multimedia production, streaming, 3D modeling, photo, peer-to-peer file sharing, web browsing and publishing, word processing, email, encryption and networking. It also includes games and a world navigator. It does automatic clustering, joining the CPU power between any other dyne:bolic on the local network, and works on modded XBOX consoles as well as the old Pentium 1. It has an "intuitive and funky" desktop interface, and is equipped for "nesting" (saves data and settings in one encrypted file on the hard disk or USB storage device). "Hence, it is possible to surf, stream, edit, encode and broadcast both sound and video, all in one CD that just has to be booted."

dyne:bolic avoids the use of both Gnome and KDE. Its applications include the graphical environment XFree86 with WindowMaker, and numerous softwares created by the GNU/Linux free software community for the past 15 years. These include:

> MP4Live for streaming MPEG4 audio and video on Darwin server

> FreeJ for performing on video livesets as a freejay

> MuSE, for mixing and streaming voice and sound files live on the Net

> HasciiCam, to have a webcam on low bandwidth

> TerminatorX, GDam, SoundTracker and PD, to perform with live audio

> Kino, Cinelerra and LIVES, to edit video and publish clips

> Audacity and ReZound, to edit audio and add effects

> Gimp, the GNU image manipulation software to edit photos

> Blender, a powerful 3D modelling and rendering tool

> AbiWord and Ted, to read, edit and save any kind of word file

> Bluefish, to generate and edit html webpages

> Sylpheed and Gpa, to send and receive mail, with full encryption

> Lopster, which permits file sharing over WINmx and Gnutella

> Samba, to exchange data over shared directories in LANs

> XChat, linphone and other messaging software for rapid communication

> VNC and RDesktop to remotely access any Win or Unix desktop

> Network tools for analysis and poweruser access to the Net

> Xfe, an intuitive local file browser recognising all file types

> GCombust, to burn data on CDs on machines with a CD burner

> XRmap, to browse world geography and the CIA factbook

> Games, which can be played in multiplayer mode online with others running dyne:bolic

dyne:bolic does not follow the desktop paradigm

established by software corporations using proprietary operating systems, but tries to explore new degrees of human interaction with computers. The developers' philosophy is summed up on the dyne:bolic website: "Death to imitation, power to imagination!"

Open Content in Practice

Bjorn Wijers

Simuze is a music portal that is committed to the idea of Open Content, hence in some senses an extension of the GPL family of licences. While the latter acknowledges that the text (or software, or image) can be modified, open content, according to Wijers, is "GPL-plus". It subscribes to the imperative that open content be changed and that the subsequent product be shared. Open content ties in well with Simuze because of recent advances in digital technology that make remixing easier than ever before. Wijers introduced the concept of netlabels — virtual record labels that give artists the opportunity to distribute and promote their music, often using Creative Commons licences. The speaker described Simuze as less of a record label, similar to a netlabel, with elements of a community-based portal. Simuze tries to create a hospitable place for artists to work on their music, and for listeners to tune in to their artists.

The developers' first, proof-of-concept website ran off an old spare PC in someone's home. It let people upload music, choose their licence. It allowed other people to listen to the music through a streaming MP3 system. They realised that user interaction is the key: good technology alone does not make software work, "it has to have a good feel, it has to be easy". They were on the verge of working out an online distribution model when their server gave up under the steadily increasing load. They are now trying to create a new, more stable system, to be put online. In the new system, artists can log in, put up a profile, photo, genre, who they are related to and inspired by, contact information, description, concerts, and have their music uploaded on Creative Commons licences: type 1/4/5, etc. This makes it possible for visitors to create playlists of the music, share them, view recommended playlists or listen to random songs from their database.

In the discussion that followed, interjectors asked Wijers why the developers had chosen a Macromedia Flash player as their streaming MP3 player, and why they weren't using the patent-free Ogg Vorbis format to stream their audio. Somewhat defensively, the speaker replied that they were looking for "the best user experience", and in the free/open source software world, "there wasn't any real alternative to Flash". He added that everything Simuze creates will be licenced under an OSI licence (as opposed to an FSF one). An interjector suggested that it was not only a question of licencing the software: what they should do is document their server interface so that people can write players for Simuze Java, C or Python, etc. Wijers asserted that Simuze was trying to create an experience whereby the listening and commenting/editing playlist experience was not separated, as was the case in sites like mp3.com.

The Free Media Lounge showcased the following digital resources and film/video projects for viewing:

The Code (59 min); screened daily at 2.30 pm
A film by Hannu Puttonen, produced by MAKING MOVIES and ADR PRODUCTIONS.
Featuring Linus Torvalds and Richard Stallman

The Code, a classic account of the beginnings of free software, presents the first decade of Linux from 1991 to 2001. It includes many of Torvalds' closest allies in the development process of an operating system that is now seen as the greatest success story of Internet culture.

Queering Bollywood

A video project by Alternative Law Forum, Bangalore

This is an exhibition and demonstration of a collection of queer readings of popular Indian cinema. Open and collaborative in nature, it subverts notions of ownership by freely copying and mixing from various sources. As a serious exercise in creativity and innovation, it ironically deconstructs the standard tropes of heterosexuality that remain the entrenched romantic staple of Hindi films.

Beautiful World
A short text film by Geert Lovink and Mieke Gerritzen

Geert Lovink is a media activist and theorist. Mieke Gerritsen is an Amsterdam-based designer.

Some Stories of Places, People, You and Us
Video/animation projects by practitioners Linda and Kristoffer from Sweden and Denmark with practitioners from the Cybermohalla Labs

This is a set of short films/videos which explore crossroads in the city, places where people meet, spaces of conversation: shops, community centres, lanes, courtyards, rooftops. Images and sounds in these films have been re-used from a shared database of photographs and recordings, with the idea of exploring modes of interpretation.

The Zoo
This text film by practitioners from the Cybermohalla Labs speaks of a visit to the zoo, which develops into a Socratic conversation on the nature of the sexual harassment of women.

/TM
This short text film produced at the Sarai Media Lab takes a playful look at particular sentences that surround us in everyday life, but which, for various reasons, we are usually barred from uttering aloud.

New Media Work

The Network of No_Des
Produced by the Sarai Media Lab

This digital work, which includes research on media and the city from the PPHP (Publics and Practices in the History of the Present) project at Sarai, opens up an absorbing hypertextual world of found material from the new media street culture of Delhi. It includes texts/images and film clips as an array of associational possibilities. The path that one takes as one travels between the nodes in this work brings surprises, confirmations and detours, and forces one to confront the fact of oneself as a forager in the undergrowth of the information economy.

Global Village Health Manual
Raqs Media Collective with Mrityunjay Chatterjee

Produced at the Sarai Media Lab

This work asks the viewer to bridge the distance between the data stream of the present and the fading imprint of the recent past, and urges the navigator to look through yesterday's web of images at the bitmap of where one is today. Reprints of 19th-century Calcutta woodcuts are used to build the interactive interface, along with contemporary elements taken from an array of sites from the Internet. These components are edited, reframed, rendered and transformed to embody a new sensibility.

Kingdom of Piracy
Curated by Shu Lea Cheang, Armin Medosch and Yukiko Shikata

This is an online open workspace that explores piracy as the ultimate form of Net art. The project includes links, objects, software, commissioned artists' projects, critical writing and online streaming media events. The purpose of "<KOP>" is to consider the legal provisions surrounding intellectual property in the context of geographical and cultural borders, and to examine the changes and challenges these present to artists and cultural producers worldwide.

Tenali Rama and the Tactical City

Rupali Gupte

A digital media presentation by Rupali Gupte, Sarai Independent Research Fellow, 2003-04. This work is a fictitious history of Mumbai's urbanism, told here through the figure of Tenali Rama – a character from a popular Indian folklore. The stories help establish the nuances of the cultural context of the situation; they also make way for a tactical intervention, rendered either through design or analysis. Throughout the narrative, cultural and urban theorists emerge as characters in the city, to emphasise that the "tactical city" claims to be a theoretical position, a stance for operating in the contemporary, and a way of thinking about built forms.

Other Digital Resources

Intellectual Property Resources CD

This compilation, put together by the Alternative Law Forum, Bangalore, is a database on critical aspects of copyright, patents and traditional knowledge. It is an experiment towards the creation of a collaborative research community around legal issues of contemporary significance.

Fearless Speech

This CD is a collaborative database which includes a range of material, from important Supreme Court cases on freedom of speech/censorship to interesting texts, music, web resources, banned books, etc.

PPHP Project CD

This CD presents the work of researchers in the areas of media and the city, working in the Publics and Practices in the History of the Present (PPHP) project at Sarai. It includes narrative accounts, ethnography, interviews, photographs, music, trade secrets, etc. It incorporates research postings and field notes, arranged thematically/chronologically to give a sense of the systematic growth of core ideas/research questions. The CD was distributed to all participants at the conference.
http://pphp.sarai.net

"Inspired" Music from the Sarai Collection

This CD, a compilation of inspired popular songs from Bollywood and the "original" scores, is an audacious take on the practice of music piracy as creative cultural appropriation.

Interviews by David Barsamian

For almost a decade now, Alternative Radio run by David Barsamian has actively campaigned for freeing the airwaves as an alternative to the corporatised empires of mainstream media empire. Presented here are some of David Barsamian's interviews with significant intellectual figures, including Noam Chomsky, Arundhati Roy, Howard Zinn and John Pilger, among others.

Web Resources Booklet

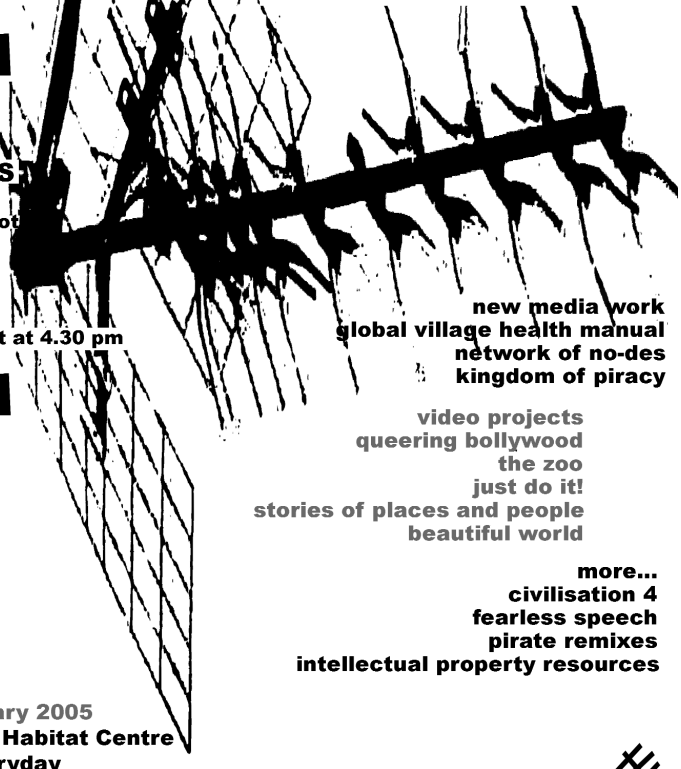
This is a small selection of links to sites that use the idea of collaborative creation and open source knowledge in creative ways. They include resources for artists who might wish to release their works under a creative commons licence so that others are able not only to download their work for free, but also make derivative work. Other links relate to the application of these principles in the field of software. The booklet includes a set of miscellaneous links that highlight the debates surrounding intellectual property and the "commons" in various spheres; provide information about copyright and open content licenses, reading material on the public domain, and other sites which use new and old media.

a browser is also an editor a desktop is also a server
a user is also a producer

a queer rendition of a bollywood blockbuster, a hacked game better than the original, a celebration of piracy as the ultimate form of net art, a socratic conversation at the zoo

free media lounge

invites you to browse play listen view



workshops

6th dyne:bolic
Jaromil

7th APNAOPUS
Silvan Zurbruegg
Victoria Donkersloot

8th gforge
Bjorn Wijers

all workshops start at 4.30 pm

Film

7th 2.00 pm
The Code

new media work
global village health manual
network of no-des
kingdom of piracy

video projects
queering bollywood
the zoo
just do it!
stories of places and people
beautiful world

more...
civilisation 4
fearless speech
pirate remixes
intellectual property resources

6th 7th 8th January 2005
Jacaranda, India Habitat Centre
2.00-6.00 pm everyday
register now - registration@sarai.net
contact - iram@sarai.net

Part of the Contested Commons Trespassing Publics conference on Intellectual property
http://www.sarai.net/events/ip_conf/ip_conf.htm

Sarai CSDS

Interviews

Peter Jaszi, *Washington College of Law, American University*

In Conversation with **Lawrence Liang,** *Alternative Law Forum*

LL: Before I get into substantial issues of copyright, let me ask with regard to one of the things I'm very curious about: how you began your collaboration as a legal scholar with Martha Woodmansee, who is a literary theorist and historian.

PJ: That's a really interesting question. Let me respond to it with a specific anecdote. I had come to a certain point in my career with a feeling that I had more or less exhausted the strictly legal discourse of copyright. After doing that work for about 10 years, I felt a little bit like a squirrel in a cage, running around and around in a circle, saying the same things, thinking the same thoughts, and not being very effective. So one day I decided to do something that is very radical for a lawyer. I would go to the library – not the law library but the real library – to see what else was being done outside of law, on the subject of copyright.

I literally discovered Martha's work on copyright through the Modern Languages Association bibliography, which led me to her 1984 article, "The Genius and the Copyright: Economic and Legal Conditions of the Author", published in *Eighteenth-Century Studies*, Vol. 17, No. 4. I began to read, and appreciate the work…Purely by coincidence, at a conference on an unrelated topic, Martha and I were thrown together about one-and-a-half years later. Over dinner, we began to develop the project of collaboration that has continued ever since.

That's a story about how accidental, in a way, the beginnings of this sort of interdisciplinary collaboration can be. From that face-to-face meeting on, it was not an accidental collaboration but a premeditated one. Our goal from the beginning was to get more people from the disciplines of law, on the one hand, and the disciplines of critical theory on the other, involved.

The first real effort to do that was the Cleveland-Case Western Reserve 'Construction of Authorship' conference, which finally was represented in the 1994 Duke University volume of the same name. That three-day conference was an amazing experience. We worked very hard organising it, and we were very strict with our participants, insisting on people submitting either papers or detailed abstracts. We spent days constituting the panels, and we were careful, or thought we were careful, to distribute the lawyers and critical theorists in a way that would being them into contact with one another, and force conversation.

It began absolutely disastrously. The first day of that conference was the one of the worst days of my life, because after all our efforts to lay the foundation, to get the abstracts, to circulate them in advance of the meeting and compose these panels, it became clear that these people were just like dogs and cats. They didn't understand each other, they didn't want to understand each other, they were mutually suspicious, and disciplinarily defensive to an extreme degree on either side. It was a terrible day.

We went through a series of panels, and in the discussion following every one of them, the story was essentially the same. The members of these factions – the legal faction and the critical theory faction – would end up not exactly shouting at each other, but the equivalent. You know, the way

polite people do when they are really, really annoyed: saying basically, "I don't know what you are talking about, I don't understand your jargon, I don't understand your point of view and perspective, what you're saying seems trivial to me," and so on and so forth.

Finally we decided we really had to address this head-on. So we interrupted the planned meeting for an improvised plenary. Basically, we spent two or three hours just trying to force these people to talk to one another about their basic premises and assumptions and vocabularies. It was a cathartic experience. There was a huge amount of hostility in the room, and there were also a few people there – I always will remember with gratitude, for example, the role that Monroe Price (then of Cardozo Law School) played at that meeting – who tried to function as peacemakers and go-betweens.

I was not sure what would happen during those three hours: whether we would manage a breakthrough or whether we were going to have two more days of hell. And as it turned out, it was a breakthrough. Everyone had dinner together that night, they drank a lot, and they came back to the meeting in a very different frame of mind.

And from that point onwards, there was a good deal of mutual understanding, a good deal of constructive criticism; there was still mutual suspicion, still conflict, but it was then that I became convinced that it was at least possible to do this kind of interdisciplinary work. Although looking back on it, I wouldn't have begun in the same way had I know how high the barriers of mutual interdisciplinary suspicion were going to be.

That is only to say that it is genuinely hard to do. And also to say that it is genuinely worth doing.

LL: Despite all the progress in critical scholarship on the mythical idea of the author, there seems to be a certain stubbornness with which the author is invoked and resurrected in copyright law.

PJ: I too am surprised by the resilience and 'persistence' of the author construct. I am sometimes reminded of these horror movies in which the monster never really dies – it dies a thousand deaths, and in the next shot you see the gory hand thrusting from the floorboards, and you realise you have to do battle again. Over the last 15 years, I have come to respect the author figure in a way that I did not when I began working on this project. When I started doing this work, I was initially impressed at the contingency, the artificiality, the superficiality of this construct, and I didn't give nearly enough attention to the ways in which the authorship construct is embedded in other larger persistent structures of thought.

The longer I work on this, the more conscious I am that authorship is not really an autonomous phenomenon, but is an embedded part of the general structure of possessive individualism. And possessive individualism is not, by any means, a thing of the past. These – call them liberal, call them neoliberal – structures are highly persistent. And in fact, these structures and concepts are the beneficiaries of one of the most remarkable marketing campaigns in the history of human thought. We have been exposed in the last 10-15 years, as a linked group of societies throughout the world, to a great deal of very effective publicity for the advantages and benefits of what is in effect a Lockean world vision…It doesn't surprise me that possessive individualism in general, and the author in particular, are alive and well.

The other thing that interests and impresses me, something that I didn't fully appreciate and understand when I began the work and that I am sure I still don't fully understand, is how much resonance the authorship story, the narrative of authorship, has for citizens and consumers.

I had an opportunity last year to work a little bit on a project that involved asking focus groups of randomly selected people from different demographic groups in the US, what they thought about intellectual property issues. We were trying to see whether, by doing these interviews, we could discover some way of better expressing to a broad cross-section of the population, from different educational and economic backgrounds, the values that are at stake in contemporary IP debates. Once again, what surprised me was how strongly people in general responded to the idea of authorship. There was an emotional appeal in this idea that one creates out of inspiration, and that one owns the result of what one's inspired creation produces, that seemed elemental and foundational. It was still possible to talk about the issues, by reframing the questions away from authorship and towards issues of corporate control and corporate greed. But as long as the discussion remained author-focused, as long as it remained a discussion of the entitlement of creative people, these everyday men and women who would not themselves have identified directly with the artistic community, still were enormously sympathetic.

So there is something about this construct that has a much, much stronger ability to endure, than I once credited it with.

Now, I don't have an explanation for that. Part of it has to do with the embeddedness of authorship in the larger structures of possessive individualism; and some of it has to do, I think, with the fact that creative activity is, broadly speaking, widely respected and admired in general society. And so the representation of creative activity as being within the category of authorship is actually one to which people in general are remarkably responsive.

The core issue of the next phase of a project to look critically at authorship probably should be to investigate, unpack, and interrogate the persistence of the concept.

LL: How would you see developments like the Creative Commons initiative in relation to some of your own work and concerns?

PJ: I have a critique of some of the ways in which the Creative Commons Licence is being implemented, and I have some concerns about the potential reach of the Creative Commons project. But I am a tremendous admirer of this effort. It is one of the most positive and optimistic efforts that exists, at least in the US, on the intellectual property scene.

Where the topic of the persistence of authorship is concerned, there are two ways of accounting for the continuing prominence of the author-effect within the Creative Commons project. And I have no way of knowing, being an outsider to Creative Commons, if either of these explanations has any validity; or if so, to what extent. First of all, I think there may have been some strategic calculation at work here. I think that the designers and promoters of Creative Commons have done a lot of work, appropriately, on how to make what they are proposing people do, appear as acceptable, as natural-seeming, as transparent. This implies that if retaining attribution rights turns out to be the statistical preference of an overwhelming number of potential Creative Commons participants, then it makes sense to provide it as a default.

Likewise, I think that if most ordinary people do think about copyright issues in terms of the categories of authorship, then it makes perfect sense for Creative Commons to cast its explanations of the project's mechanisms on the website and elsewhere, in those terms.

And that is what my reading of the Creative Commons website suggests has been done – that in an attempt to reassure users of Creative Commons that participating in the system is a modest

rather than a radical step, the designers may have chosen to rely strategically on author-talk as a way of naturalising the project. They seem to be saying: "This is not a big step – you retain everything, you don't give away much, your work remains protected, etc." So that's one possible explanation: that this is all a strategic development.

The other explanation is that even the designers and promoters of the Creative Commons system still may be, to a certain extent, under the spell of authorship. I know I am, so I can't imagine why they shouldn't be. It takes constant, self-conscious effort, struggle even, to avoid falling back into the force-field of the author-effect. And it's at least possible that in a complicated project of that kind, with many individuals involved in the design and implementation, there may be some who actually take the premises of authorship relatively seriously, and view the Creative Commons alternative as an important variant on the regime of total authorial control, rather than as an abrupt and complete departure from it.

So my best guess is that there is a combination of factors at work. On the one hand there is the acceptance of premises of the author-centred view of copyright, and on the other hand, some strategic calculation. And again, to be clear, I don't intend to be critical of the project and its aspirations, but only to recognise it as a site of the phenomenon of the persistence of authorship, which I've been commenting on.

LL: Would your response then be to focus on strengthening the statutory exceptions that exist within copyright law, for instance the fair use defence?

PJ: Fair use certainly can use support these days. In the US, you hear some of the same critiques being made by both very progressive copyright activists and by the MPAA. One thing they say that is that fair use is just a privilege that can been invoked defensively, that it is not an affirmative right. And as such, it can't be thought of as being a part of any rights-based system of intellectual property.

My response to that, whether I hear it from the right or from the left, is that the right/privilege distinction has been so thoroughly deconstructed in so many contexts over such a long time, that I hardly even feel the necessity of responding. But if I were to respond, I would offer an analogy: another category of law, self-defence. The claim of self-defence in the face of physical assault is formally just that – a defence. But the availability of a potential defence of self-defence, in a formal legal setting, translates into the right to protect oneself, appropriately, against authors of violence in the real world. I think this is also true of fair use. The potential availability of a legal defence of fair use in a formal legal setting translates in everyday lived experience into a right to use, consistent with that defence. So the right/privilege (or right/defence) issue seems to me to be a false one.

What's not so clearly a false issue is the oft-repeated assertion that fair use, as construed in courts, is too narrow in its scope, too uncertain in its reach, too dependent for its effective assertion on expensive legal representation, and so on. Those all seem to me to be entirely legitimate practical critiques, which need to be addressed at the practical level.

There are various ways to address them: some through legislative action, some through collective action, some through institutional action.

Let me emphasise for a moment collective action, as it's something I've been thinking about and working on a lot, recently. One reason that fair use rights are in disarray is that disciplinary communities, that would benefit from the exercise of those rights, have arrived at no internal collective understanding, community to community, of what the content of those rights actually should be. I think that such a disciplinary consensus is enormously important, because at the end

of the day, every fair use inquiry, at least in the US courts, eventually devolves into a decision about whether the action taken, whether the use made, was reasonable and done in good faith. Thus, the ability to say that the use that one has made falls within a disciplinary consensus about what's appropriate can be enormously important.

I'm trying to work with different disciplinary communities to develop consensus statements of best practice with respect to fair use of pre-existing copyrighted material.

The community of documentary filmmakers is the group with which this has gone the farthest, perhaps because it's one that turns out to have all sorts of problems with getting copyright clearance for music and images incorporated in new non-fiction films. If filmmakers are going to have better access to fair use, it will have to be because of their own efforts. In this area, lawyers can't dictate things to disciplinary communities, which must arrive at principles themselves. But I have been helping to convene meetings of documentary filmmakers to talk about their needs and their shared sense of good practice. Along with my colleague and collaborator Pat Aufderheide, of my university's School of Communications, I've tried to translate what we've heard from filmmakers into an affirmative code that can be widely promulgated and which will have a variety of utilities. This Filmmakers' Statement of Best Practices in Fair Use has been endorsed by a number of organisations to which documentarians belong, and it will be released on 18 November 2005. More information about it can be found at www.centerforsocialmedia.org/fair use.

The Statement will be a source of information for documentary filmmakers themselves – that's important, because this community gets a lot of misinformation about copyright from a variety of sources, including their own professional educations. It also will be a source of information for gatekeepers – the insurers, the broadcasters, the distributors and others – because one of the biggest problems for filmmakers now is that those who make use of prior copyrighted materials are often told that their films cannot be broadcast, cannot be distributed, cannot be otherwise made available unless all rights are cleared. I hope the gatekeepers will be significantly reassured by the existence of this disciplinary Statement of Best Practices. And then finally, in the event – the very unlikely event – that any filmmaker operating within this code of practice would actually be the subject of a lawsuit, it would be an enormously powerful tool of defence.

This is an example of what I mean when I say that one can build up fair use, and other limitations and exceptions as well, including those that exist in legal systems other than that of the US, through collective action.

Likewise, fair use (and other similar doctrines) can be built up with legislative action. There may be instances in which the codified form of limitations and exceptions in actual law can be improved upon – although I'm very cautious about that, because any time you open up any one of these codifications to reexamination, you run a risk. And the risk is that there is going to be an intervention from the other side, which at the end of the day might leave you less well off than when you began, rather than in a better position. And institutional action can help to build up use rights. In fact, we need institutional intervention at every level, including the international. That's why I am enthiastic about the movement for some kind of an international codification of an affirmative access-to-knowledge right. We have to see whether this is going to be a fruitful activity.

It's interesting to note that this access-to-knowledge campaign really originates in Chile, one of the first countries to be involved in a free trade negotiation concerning intellectual property rights with the US. When the US-Chile Free Trade Agreement was concluded several years ago, it was

supposed to be the pattern agreement for the Free Trade Area of the Americas agreement. The US invested a tremendous amount of diplomatic energy and coercive pressure in getting an agreement with Chile that was as favourable as possible to getting high protectionist claims. And the Chileans, for a variety of reasons, including the fact that they were even more interested in other terms of the FTA than in intellectual property issues, more or less complied with US demands. Then they experienced a kind of buyer's remorse, and began to realise how much they had conceded in those negotiations on intellectual property rights. Ever since that time, Chile has been a real hotbed of interesting thinking on how it may be possible to push limits and exceptions within the set framework of IPR norms that they're stuck with under the FTA.

There's a tremendous amount of potential there: not only in general, but also within the enabling TRIPS framework, for the recognition of significant access-to-knowledge rights. That potentially really has not been exploited to date. What I'm hoping very much will happen as a result of this international campaign for the articulation of access-to-knowledge rights, is that groups of people will begin thinking together, across national boundaries, about the potential that there is within the existing set of arrangements; that this will have a healthy effect for the development of national legislation; and that it also will have the secondary effect of making it harder, in future negotiation international rounds, for the US and others to deny that potential.

All these possibilities for building limitations and exceptions to copyright are very exciting to me, but I have to acknowledge that they are in some ways a second-best alternative. The best alternative for gaining recognition of the rights of spectatorship, the rights of information practice, the affirmative rights of public access to information, would of course be to somehow roll back the fundamental guarantees that we afford to authorship (and inventorship) in the first instance. themselves. As a political matter, however, I do not see this as a realistic alternative. Hence my investment in the project of translating limitations and exceptions into affirmative rights of access to knowledge.

LL: My own reading of the fair use doctrine is that there are two primary strands to it: one strand pushes the idea of fair use vis-à-vis content, and this is exemplified in a number of cases like *Campbell vs. Acuff Rose* (the *Pretty Woman* case), where the focus is on the ability to engage in transformative authorship. But there also seems to be another strand of the fair use argument, which looks at questions of monopolies and demonopolisation. This is evident, for instance, in the landmark case of *Sega vs. Accolade*. This held that even if there was a commercial element, fair use could not be ruled out. Sega developed a game console called Genesis, and Accolade, an independent producer of software, used a two-step procedure to make its own games compatible with Genesis. They reverse-engineered to discover the functional elements, disassembled and decompiled, i.e., transformed the machine-read code into human-read code. They were then sued for copyright infringement. Accolade argued that intermediate infringement is not infringement unless the end product is substantially similar; and that disassembly of the object code is lawful since there is no protection in ideas alone. Finally they claimed fair use exception (to understand the ideas and functional elements in the software).

Copyright for commercial use is presumptive unfair but that presumption can be rebutted by characteristics of commercial usage. While the ultimate purpose may have been to create their own games, the direct purpose was to study the functional requirements for Genesis compatibility. Public benefits notwithstanding, the alleged infringer may benefit commercially from the act of transforming the software.

How can these two strands, of fair use vis-à-vis content, and monopolies/demonopolisation, be

woven together? I think this is important because sometimes the over-determination on content and creativity makes it impossible to understand other modes of practices (like piracy) where the creativity may not lie only in the content side, but perhaps in the infrastructure side of things.

PJ: What has been lost in the discourse of fair use in the last 20 years has been the notion of personal use. We have to work very hard to recover that third strand in the analysis of fair use. To reiterate, this strand is not the one based on transformative use, nor the one based on pro-competitive use, but the one based on personal use – based on the notion that, as individuals, we are entitled to improve ourselves, to make connections with others, to participate in culture, and that engaging in those activities requires a relatively wide range of particular uses that are in potential tension with copyright, particularly digital copyright, as it extends its reach into the personal sphere. This never used to be the case. In an analog environment, personal use was protected, not so much by doctrine but by the practical characteristics of technology itself. In the digital domain, that is no longer the case.

The content providers would quite readily say, "Well, the technological change demonstrates that the public/private distinction no longer has any applicability in this field; all that is private is also public; only markets exist, etc." I think we need to speak back to that characterisation of the current situation. I think we might have to say that digitisation, far from representing the penetration of the public sphere into the private, may well represent the penetration of the private sphere into the public.

I don't know if one can recover the notion of private use as a core element of fair use, by somehow blending transformative use and competitive use, or whether – and this is my inclination – it has to be recovered in a more direct/frontal way by insisting on this third element as a primary historic and functional element of fair use. In any event, this is a crucial part of the project, and unless it can be accomplished, I think the project fails.

LL: How would you respond to a political economy defence of piracy ?

PJ: Doron Ben-Atar's talk at this conference, on the early history of technological innovation in the US, did not focus on copyright. But a similar story could be told, referring not only to publishing history but more generally to the growth of the cultural sector in the US, through the mechanisms of copyright piracy. This story in some ways reinforces and underlies the one about patent history. And like the patent story, it illustrates a political economy argument. But it is not the same political economy argument that is made in *Sega*, which is about competitiveness and innovation, about mechanisms of market entry, and about the evils of monopoly. I think the political economy argument for piracy is a different one, harder to communicate , but still a very powerful one.

Historically, and in the contemporary environment, the emergence of national cultural industries is often founded on a history of piracy. The US is a good example of that, but there are many other examples that need to be documented. Of course, this argument may not sustain IP piracy practices indefinitely, but only till such time as the emergence of a more ordered cultural sector either has, or definitively has not, taken place. But I think it's an argument that needs to be made, and for obvious reasons it's a terribly difficult argument for anyone in an official position to make. And so it falls on us, who are not burdened with official positions, to make it.

I remember a conversation I had a few years ago with a Russian copyright lawyer, about record piracy in that country. She told me that the account of Russian sound recording piracy that we were getting in the US was essentially completely wrong, because it was an account that emphasised the

role of mafias and gangs and really evil people. But in fact, most of such piracy that was taking place in Russia in the immediately post-Soviet period was on behalf of aspiring domestic recording companies. They were seeking to build up some institutional and technical capacity, so as to begin to be able to record domestic Russian music or to become licenced issuers of imported music. And this rang true for me – it was so resonant of the old story of the US of 1790 to 1891…

I don't know if that is a sufficient account to deal with all the phenomena of piracy that are present today, especially in Asia. But this account needs to be kept very much in sight. Were IP interests in the Europe and the US actually to succeed in extinguishing piracy in Asia, Africa and Latin America, it would be a defeat wrapped in a victory: not only from the standpoint of the populations of those continents, but ultimately also from the standpoint of IP owners in the most developed countries themselves. Because were such extinguishment possible, the cultural consequences would be so devastating that, as a practical matter, there would ultimately be far less cultural material to be traded in global markets.

The most cynical view of the US-European IP industries is that they have absolutely no interest in Indigenous culture or the development of Indigenous culture in the rest of the world; these industries would be quite happy if those Indigenous cultures vanished so the rest of the world could function simply as markets for Western cultural production. Perhaps that's true. But if so, even from the standpoint of their own self-interests, they're taking an enormously short-sighted view of the situation.

In some respects, your question is a loaded one. At least in the US, the one thing you can't be, as a respectable, progressive IP activist or scholar, is a defender of piracy, at least in a non-historical sense. One can tell historical stories about piracy, but one really cannot afford to be labelled as pro-piracy in the contemporary. Thus, I've been disappointed that in the debates over P2P music distribution in the US, almost no one – and I include myself – has come forward to say, "This activity is good, and should be celebrated rather than denigrated." Instead, progressive copyright activists and scholars have said, "Well, of course we oppose piracy, we oppose promiscuous file-sharing. We think, however, that the technology should be preserved, we think there should be some compromise, that file-sharing should be licenced rather than suppressed, etc."

What almost no one has been willing to say – and I wish now that I had been courageous enough to do so – is that this exchanging music is a fundamental cultural activity, through which tastes and markets and opportunities for new production are being created. Far from being a threat to the development of a cultural sector, file-sharing is actually tremendously promising from that standpoint. What no one has been willing to say is that almost all of this music sharing goes on at the economic margins, on the part of people who are already spending absurdly large parts of their disposable income on the acquisition of cultural products in the marketplace. And no one has been willing to say this, because no one – and again I am including myself here – can afford to be tagged or labeled as a friend of piracy.

LL: Do you think the copyright debate in countries like India has yet to take on the sense of urgency as it has in the US, perhaps because the creative/artistic community have not yet faced a situation where cost of access to materials acts as a prohibitive force to their work? The documentary filmmaker community in the US, for instance, seems to be very active in debates on copyright and access.

PJ: I think that here and in the rest of the world, the documentary filmmaker community is where

the US documentary filmmaker community was 20 years ago; where barriers to the use of pre-existing material have not emerged as a significant impediment to the prospects of documentary production. The last thing I would ever want to claim is that the current cultural situation in the US should represent anyone else's future, with respect to any issue. But I have to say that I would not be surprised if elsewhere in the world a transformation were to occur over the next 10-15 years, similar to the one that occurred 10-15 years ago in the US…

One of the things we discovered when we began talking to documentary filmmakers about this issue, was that people who had worked in the field for decades would tell us again and again, "Yes, 20 years ago I made films that I would never consider making today; 20 years ago I made films which I can no longer show today, because the demands for rights that existed then are completely unlike the demands today."

The multi-part documentary *Eyes on the Prize*, made 15 years ago, pieces together the Civil Rights struggle using lots and lots of original footage, personal footage, etc. It is an essential document which cannot be shown, distributed or otherwise be made generally available. It exists only because there still are a few VHS copies in circulation which have not deteriorated to the point that they are useless. When these copies are gone, the film will be, for all effective purposes, gone – unless heroic efforts to relicence the copyrighted material it contains are successful. Documentary filmmakers outside the US should look at the history of the form in the US as a cautionary. I'm not saying that it will happen here, but it could.

Documentary filmmakers turn out to have, themselves, a high level of rights consciousness. They are authors, they understand themselves as authors, and they can be very, very prickly about their authorial entitlements. Our project began with lengthy interviews with over 50 documentary filmmakers, ranging from 40-year veterans to brand-new practitioners. We discovered that on almost every level, though people grumble and gripe and complain about the difficulties they face in making use of copyrighted materials, they have a relatively robust sense of their own entitlements. One can look at that either as a problem, or as an advantage.

My hope is that the Documentary Filmmakers' Statement of Best Practices on Fair Use will prove to be a particularly robust document – precisely because it will have been arrived at by people who are not enemies of IP, but are in some sense strongly invested in the institutions of IP themselves. Initially I was concerned that the divided consciousness of documentary filmmakers is going to be a problem rather than an advantage, and they they would be unwilling to cooperate in the project, or be unable to come up with standards for fair use that are sufficiently comprehensive and far reaching. Happily, however, this wasn't the case.

The truth is that this mixed consciousness, this sense of oneself as author and user, as entitled owner and as the member of a public with affirmative-use claims, is typical rather than atypical. This divided consciousness is very much like the divided consciousness of university teachers, like the divided consciousness of graphic artists, like the divided consciousness of every other category of information practitioners.

I think that we're just talking about an inherent paradox here, which is perhaps a paradox of the persistence of authorship…

Brian Larkin, *Columbia University*

In Conversation with **Anand Taneja,** *Sarai-CSDS*

AT: What prompted you to start your work in Nigeria?

BL: I was trained in American studies as an undergraduate, in the UK. By the end of that, I was doing a lot of cultural studies, media studies. I went to the US with the idea of continuing that sort of work. The move at that point had been towards ethnography of the media. So I enrolled in an anthropology programme that looked at media. It was very new. I was one of the second or third doctorates to come through the programme. I thought anthropology would teach me ethnography, and techniques with which to go and research media. And one thing I soon realised was that the media theory I'd been dealing with was based on Europe and America. I became interested in the fact that there was a world out there in which media played a role in different ways – that the grounds for a media theory could not be presumed – and I wanted to go and research that.

Nigeria interested me for a number of reasons. For one, I was interested in the relation between media and nationalism, ethnicity, and violence. Nigeria has a lot of ethnic conflict; it had the first television station in sub-Saharan Africa; it's very developed, relatively, in Africa; it's a very fecund place, there's a lot of stuff happening. I thought it would be a good site.

AT: This was also just after the Salman Rushdie *fatwa*…

BL: The other thing is that Nigeria is primarily a mixed-ethnic country; it has a predominantly Christian south and a predominantly Muslim north. Where I come from in London, there is a large Muslim minority population. Post- the Rushdie affair, the position of Muslims in England and elsewhere in the world remains intensely conflicted in society. The figure of the Muslim occupies a political space, and performs particular symbolic work in society. I became very interested in working in an Islamic society. And because of that, to work on these things – media, religion, Islam – I chose to work in the north of Nigeria. There are good reasons, if you research media, to base your work in the south of Nigeria, as it is more developed. The north is always trailing, but has its own compelling dynamics.

AT: Your work on northern Nigeria does unpack a whole history of social practices around cinema. Are you romanticising some of the aspects of the circulation of media, of piracy?

BL: Romanticising in what way…?

AT: Romanticising is perhaps a wrong word. I meant that there is a certain investment in giving us a different understanding of piracy than what is usually perceived, which is also hinting at transnational connections which are not 'global' in a negative sense, but in a nostalgic sense, maybe, harking at older linkages…

BL: I was interested in doing work in the global media. As an undergraduate in the early 1990s, I was trained to read the debate on cultural imperialism, to trace the move from third world cinema to 'third' cinema, and so on. Like all things – like the work I'm doing now in different ways – these debates created a conceptual grid of what constituted global media. I went to Nigeria to do dissertation research on that.

On my first research trip I was planning to base myself in Kaduna, a mixed Christian-Muslim city, and on arrival to stay in the Muslim city of Kano for a couple of weeks. There I just started going

to the cinema, and there was Indian films five nights a week, one night for Hollywood, one night for Hong Kong. There were posters of Indian film stars everywhere; there were stickers on the backs of buses; it's a very vibrant presence in everyday life. I asked people about it – I had read practically all I could on Nigerian media at that time, all I could get hold of, there's a lot more in Nigeria – and only a couple of sources mentioned Indian films, in a minor way. Certainly, none of it was analytical, because conceptually it wasn't defined as African media. African media, and at the time Bollywood, didn't fit into the paradigm of what people analysed when raising questions about global media.

The dominant debate in cultural imperialism is about the spread of Western media and values, and the possibility of resisting that spread by producing African media that reflected African worldviews. Scholars of Indian films at that time didn't know much about how these films circulated in north or west Africa. For Nigerian scholars, Indian films didn't constitute African cinema. And I knew immediately that it was this very powerful thing. So because of that, I became interested in cinema.

I am also interested in Nigerian video films. If you read mainstream journalism about Africa in the West, you come across northern Nigeria mainly because of its pathologies: the sentencing of women to death under Shari'a law, Muslim-Christian conflict, several outbreaks of epidemics and the poverty that all of these feed on. These are serious issues, yet at the same time, in the very midst of it, there's a lot of cultural production…It doesn't mean that ethnic and political conflicts are not important, but to my mind it doesn't mean that one shouldn't pay attention to other aspects of peoples' lives, the creative cultural work that is also going on. And that's what I've tried to do, in a sense.

AT: You attribute a lot of the cultural efflorescence to the pirate aesthetic, and the spread of pirate networks. It's interesting that you don't define piracy in legal/non-legal terms, but in terms of infrastructure.

BL: I've tried to push my analysis of media into a wider question of infrastructure. In my book, one of the simple ways I approach technology is through analysing the ideological intentions that go into introducing a technology. Why did the British establish a radio station? Why does an independent government want to put up a television station? What's in it for them? What are the aims that go into this? These aims and intentions have powerful effects over how technologies are and what they come to be. But, once established, media have particular technological and semiotic properties that are relatively independent of whatever intentions went into their funding. They also enter into social domains and people there may accept and internalise those aims and ambitions, or may use media in a different way. How media operate is the outcome of these three related, yet interdependent, moments of intention and creation, material properties of technology and the social formation within which they operate.

That's generally how I think of media. So I examine the introduction of the radio station as part of the same process that led the British into building roads, or funding of the rail network. It helps me, in the colonial context, to define what's going on. And when I see things like the Muslim resistance to the building of cinemas, I think that's partly in consequence to the ideological load placed on media technologies by the British. Media were not simply technical objects, they were doing work in the service of colonialism. And people's reactions to media technologies must be seen in that light.

Regarding piracy, there are radical people who want 'free' piracy, including people at this conference; they want it to be accepted, they think it's a good thing; it's an argument for a return to the commons, in which all these things flow freely. I don't know where I stand on that, particularly. Partly because the people I work with, who are media makers, aren't interested in it. They're making films, they don't want those films pirated, they need to make money off those films – they are not wealthy and they need their work to bring in some money so that they can get by. Otherwise they suffer; they're trying to get by in a very uncertain world. I can see that very clearly.

So I don't want to romanticise the idea of the pirate, and say that it's all great. But yet, what they define as piracy isn't what I define as piracy. We have different definitions of it. Their main concern is video rental shops where you go to rent a video to watch it and then take it back. In England and America, that's just not an issue. You can do that, it's like a library. No one says the library is piracy. There, such rental is an accepted form. But in Nigeria it's not.

The thing we call 'piracy' is not a homogenous concept. It's defined differently in different locales. You can't presume what piracy means. You have to interrogate it. When I approached this issue in Nigeria, I sidestepped the legal questions and simply asked: "Given the fact that piracy is the default infrastructure that allows a flow of global media, how does this take place? What work is piracy doing?" And because I have an interest in the materiality of media, how media work, their material properties, I tried to look at piracy in terms of the social situations of viewing it creates. What is the difference in a cinema theatre, as opposed to a video parlour, showing pirate videos, for instance?

In Nigeria, the basic understanding of the operations of media was different from assumptions about media in western theory. How do you negotiate the theory of reception when there are blackouts all the time? Do you ignore blackouts as irrelevant to a theory of reception – merely noise? Or do you step back and ask, what does the blackout do to the viewing experience?

I was aware when watching English language videos – which meant pirate videos – that I couldn't understand the words a lot of the time. I speak English, certainly a lot better than many Hausa speak English, but the degrading of the sound was so great, I couldn't understand it. In terms of media reception, this was the consequence of piracy. It made me wonder about the differences between the cinema experience and watching at home. A screen 15 feet high, with sound, versus a small TV, with a bad image with lots of snow and interference…Those questions preoccupied me. When I came to the question of piracy, I decided to sidestep the legal questions and focus on the material consequences. Piracy exists. It is the ground for all media circulation, certainly non-Western circulation. How does it operate?

AT: You make an interesting point about pirate aesthetics. I was going to compare that to the pirate markets here. For example, shopkeepers who sell pirated discs in Delhi say that camera prints don't sell any more.

BL: A camera print…? You mean the one that has been shot in the cinema.

AT: Yes, these were in demand earlier, but now the infrastructure of piracy is so developed that people refuse to accept the degraded print.

BL: My research indicates that people don't deliberately introduce that aesthetic. It's just a consequence of piracy. In my conference paper, one of my arguments is that piracy created the infrastructure that allows Hausa videos to exist. So the consequence is that Hausa videos are

produced in exactly the same way as pirate videos. You are given a master tape; you make a thousand dubs of it; you sell the tape to someone else; they make a thousand dubs of it, sell them that way. So the same degradation goes on in Hausa videos as in pirate ones.

Yuri Tsivian said that in early cinema in Russia, filmmakers would use the scratching effects on the film to try and evoke rain. They would try and incorporate the degradation aesthetically. I never found that degradation was an intentional aesthetic effect, in Hausa videos – I was just arguing that it *is* an aesthetic effect.

I live in New York, and when DVD players came out there, they cost $600 while video players cost $150 – and the only people I knew who bought them were South Asian. That's because the jump between watching a video and a DVD is a jump in quality. Not a big one. But for South Asians, the jump between watching the pirate Bollywood films on video or on DVD was an enormous one. The impulse to pay for better quality was clearly there. I've never come across this in Nigeria. Maybe the cost…I don't know. I'm sure that if there were two things that cost the same, presumably people would buy the better quality one. But filmmakers argue that audiences do not seek better quality for the sake of better quality. Filmmakers seek to make better films, and use more tricks, but amongst audiences and producers quality was never really a pressing question.

AT: You've used Virilio's argument about everyone celebrating the speed of modern technology while ignoring the possibilities and consequences of breakdown. Could you elaborate on that? I'm looking at this through the lens of the 'pirate aesthetic', as it were, disappearing from Delhi but continuing in Nigeria…

BL: While I find Virilio's work on breakdown and speed insightful, I also find it problematic in that it presumes a homogenous society. He has a dystopian paranoia, that we're all connected in real time, that speed rules everything, that duration has disappeared. Real time technologies means that built space is now defined by terminals, not by the boundaries of walls and doors. Virilio poses all these sorts of issues, and they presume on a society where everyone is connected and in which every connection works. This may increasingly be the case in America, though not completely; but when you go to India or Nigeria, the situation is different.

So how do you interpret the concept of speed? The Internet is very present in Nigeria, it has speeded up Nigerian access to a wider world that's now a real part of everyone's daily experience of time and space and cultural flows. And yet each technology brings its dysfunction with it.

And I'm very interested in that question of breakdown and repair in poorer societies, developing societies. The car that gets to Nigeria gets there after it has had its useful life in the West. We have the MOT in England: if you fail the MOT because the car has a broken light, you can't drive. And when it gets to a certain point that it costs too much to get the repairs done, the car is sold on. These cars, and stolen cars, are put on ships to Nigeria, where they start a new life. The network, the system in Nigeria, accepts this as there is a vast support system of mechanics and people who repair electronic equipment facilitated by the fact that things break down. People have to repair.

I'm sure this happens in India. People don't just throw things away. When I moved, to America, my video wasn't working, the plastic screen of my computer monitor cracked, the tube was shifting…I went to enquire about repairs, and each time the person said, "Chuck it away and get a new one, the cost of repairing it is more than the cost of a new one." In Nigeria no one does that. And the necessity of repairs is figured into the concept of time, because while you are sped up in certain respects, things are also always breaking down. When you connect to the Internet, the

electricity disappears. You walk around the back and switch on the generator, You have to wait for it to boot up again. You press 'W' for web mail, and thirty seconds later, 'W' will pop up in the browser window.

The consequence of using this new technology of speed in a country like Nigeria is that the technology itself introduces new forms of waiting, of duration, that are only there because technologies of speed were introduced in the first place.

AT: You've talked about piracy enabling Hausa video, and how piracy erases temporary differences, the hierarchy of time, and of the "recycled modernity" existing in Nigeria and India. What thoughts do you take away about piracy, following this conference? You've said that you don't take a legal stance…

BL: Piracy is different things in different places. At this conference, different conversations were going on. That's proper, it should be the case. The debates are different, the politics are different, the phenomenon itself is different everywhere, so there are going to be different questions.

I worry about piracy in Nigeria because it has affected the Nigerian music industry, really hurt people's ability to live their lives, and make music, and all the rest of it. But piracy also had a powerful effect in that it shifted people back into supporting live performances, it renewed patron-client relations, i.e., music that is not commodified by sale through cassettes, etc. At the same time, piracy facilitates access to media in Nigeria that otherwise people would be barred from. It's a very real question.

Hollywood claims that for every CD sold, every CD pirated, it loses money. That's not true. All the people listening to pirated CDs in Nigeria would never be able to afford originals. All the people watching pirated DVDs would never be able to afford it. Some 1% at the top might, but for the vast majority of Nigerians, 120 million people, as probably for the vast majority of Indians, the stable commodity price of $10-15 for a CD is just not feasible. So if you think of it that way, there's a massive realm of the world's cultural production that is made off limits to whole categories of society.

There is a fundamental political question of access embedded in the issue of piracy. There's also the question of protection, and there's a tension between them. This conference has made me think about that quite a bit.

There's a strong argument about a need for a commons, and that's a very important thing. But on the other hand, I would like to stick with trying to pay attention to how this plays out in different situations, and what the politics might be. I don't think that people downloading from Napster in America have the same moral claims as a Nigerian listening to a pirate cassette. I just don't. There's a world of difference between a Nigerian watching a pirated DVD and someone watching it in New York, where I live.

I do think that the current spread of intellectual property regimes is outrageous, as is the fact that more material is being taken out of the public domain.

AT: What are you taking away in general, from this conference?

BL: My main impression is of Sarai, even more than of the conference. When I did my research work earlier, I felt very much that I was doing it in a wilderness, in a certain sense. I was trained in a programme that taught me to look at media in certain ways, and there were other people in that programme I learned a lot from. But the things I was looking at, the space of cinema theatres, or

the nature and aesthetics of piracy, or the history of the introduction of media technologies: I wasn't in dialogue with anyone about any of that – though of course since that time there has been a burgeoning amount of work. It seems that here, anything I might possibly be interested in is being researched by someone focused on precisely that issue. There's a very rich, very interesting take on media being developed here.

Being English, and working in Nigeria, I am interested in India itself, how it works in the overlap with England, the differences – like the overlap in Nigeria and the differences, also very strong. But in many ways there are similar things going on. India does make me want to go back to Nigeria. I haven't been back for a while because I'm trying to finish my book. Being here makes me think, "Oh yeah, I want to go back there."

McKenzie Wark, *New School University*

In Conversation with **Shuddhabrata Sengupta,** *Sarai-CSDS*

SS: What does the term 'intellectual property' mean to you?

MW: 'Intellectual property' is a fairly unfortunate term. It's something of an oxymoron, I think; it's a contradiction, an example of two things that don't go together. But it's passed into the discourse, it seems to me, as a way of reframing things like copyright and patent, which traditionally understood transactional. But when you begin talking about IP, it starts to become a sort of private property right, absolute, in perpetuity.

As I understand it, "IP talk" really starts to dominate in the 1960s, when there's a shift away from the old negotiated right paradigm to a kind of private rights/private property paradigm.

SS: You seem to suggest that when this happens, when private rights and the property rights paradigm become the dominant way in which intellectual and cultural material and practices come to be governed, then new hierarchies of possession and dispossession are set in motion. Could you elaborate on this?

MW: Well, to modify a famous line: "Information wants to be free, but is everywhere in chains." It seems to me that there's a unique, even ontological characteristic that information has. It can escape from scarcity. Information is always embodied in materiality, but this embodiment is not limited to a particular materiality. It can be copied, with little lost, from one materiality to another.

So on the one hand we've produced this new capacity, this new possibility of escaping from scarcity; on the other hand, we keep trying to stuff it into the old commodity form, to trap it in particular materiality, so that it can be bought and sold. So to me, it's one way of framing the contradiction about time: that finally we can escape the fetish about the commodity form, in this one particular domain, that of information. But more and more legal, technical and economic forces are mounting to prevent that from occurring.

SS: If we were to escape from the commodity form, what would be the consequences for creative and intellectual work in general, and would there be consequences insofar as the 'material' economy is concerned?

MW: I think there's an immediate consequence in opening a space for free productivity, for self-valorisation, as the Italians say. I think that world of free productivity has always been a latent promise, this utopian idea of "from each according to their abilities, to each according to their needs". The one domain where this can actually be realised is information, precisely because you could free it. Having been freed, it has the potential to transform the rest of the material economy: the economies of agriculture and manufacturing that don't disappear just because information has these new qualities. The freeing of information doesn't wish away necessities, but it might transform the ways in which necessities can be met. And I just don't buy Slavoj Zizek's argument that this desire for free productivity is a false one. That's the point at which he capitulates to the reigning ideology of our times, what Margaret Thatcher summed up as "there is no alternative". The striking thing about information is that the new technologies reveal the ontological promise of information, that it is the one domain free from the necessity of scarcity. Indeed, it promises the scarcity of necessity.

SS: At the end of your recent book *A Hacker Manifesto*, you say, "When even the air melts into airwaves, where all that is profane is packaged as if it were profundity, the possibility yet emerges to hack into mere appearances and make off with them. There are other worlds and they are this one." Clearly, when you say "There are other worlds and they are this one," you're not deferring the process of locating 'other worlds' and alternatives to the way things are onto some perpetually postponed future. You seem to indicate that this business of creating an alternative is happening right now. Can you tell us some more about this?

MW: I stole a bit from the Surrealist poet Paul Eluard, who says, "Another world is possible, and it's this one." That's one translation. I changed it a little bit. And it might also be a little bit like Derrida talking about a sort of messianic promise, but it's not the future: it's the gap between what language says is possible, and what is actual – that the space for an ethics, or for critical thinking, and then for practice, is in that perpetual gap which can never be closed; between what we can think and what we can do. Or to put it in more concrete terms, the freeing of information from any particular materiality is a social movement happening all around us, in the free software movement, in the free wireless movement, in the aesthetics of cut-and-mix, in file-sharing, even in piracy.

SS: When you talk of this movement to "actualise" this possibility, you invoke the figure of the hacker. For most of us, the hacker implies the computer programmer who liberates information, but for you, it seems to embrace a far more inclusive and capacious domain, or even domains of cultural and intellectual practice? Can you tell us who, or which kind of people, in your opinion, embody the 'hacker ethic'?

MW: I really respect programmers who conceive an ethics in what they do. I really respect Richard Stallman and the free software movement, and just the everyday creativity of the programmers that I've known. I think this is a kind of leading transformative intellectual labour of our time. But I wanted to conceive of a larger notion of intellectual productivity, modelled after this leading form in our time. So, with regard to anybody who produces new information that can be trapped in the form of intellectual property, I call that person a hacker.

So I think we have to get out of our little, narrow, specialised, even mutually hostile ways of thinking about what we do. Musicians don't really talk to writers, who don't talk to programmers, who don't talk to scientists…We have to get away from that, and say, "Well, look, the commodification of our work makes all of what we do equivalent. X amount of my words are worth Y amount of your research results, Z amount of your lab experiments, and so on." In a sense, what we do as 'hackers' is all made equivalent by the market, so why don't we think about our common interest in relation to that?

This is why I wanted to expand the word "hacker" a bit more broadly. But it's also a way of saying "farmer-worker-hacker"; it's a way of saying, "Here are the three kinds of productive work in the world, can you align them in some way?"

They're different, yet they could form alliances; there are common interests that we could seek transnationally, of what I call the "productive classes" – farmers, workers, hackers. We are culturally all different, but in relation to property, the market, the commodity, we all work for someone else. We have that in common.

SS: You said in your presentation that we needed to look at histories of globalisation, a long history by which the world is recreated. Does that allow us a certain advantage, also, of saying that we are not afraid of globalisation, that we can reconstitute it?

MW: People forget that Marx was actually in favour of 'globalisation', because he thought it was a process that developed the world to the point where capitalism became redundant. Without entirely subscribing to that view, I do want to resurrect the 'progressive' strain in his thinking. I don't want to be always 'resisting' everything.

So the question becomes, first, are there paths to globalisation that can benefit the 'globalised'? Second, is there indeed an overcoming of capital, its transformation into another stage?

And I think there is. I think we are in transition from rule by a capitalist to what I call a "vectoralist" class. One that controls the value cycle not by owning the factories and mills, but by owning the brands, patents, copyrights, trade secrets, and also the vectors along which these are communicated.

Another heresy: I really do think there is a totality; that history does connect us all together. But I think the action is shifting, and that history is being made in what used to be the periphery. History is being made in places like China, India, South America. The centre has shifted, and one needs to try and think that. So, centre-periphery isn't fixed and stable for all time; maybe sometimes you've got to see those shifts in operation.

In some ways, Bangalore is more metropolitan than Clarksdale, Mississippi, which is in the third world even though it's in the US. Centre-periphery has got very mixed up. One can't generalise about national aggregates much at all. One has to look for how those relations thread it together; one has to think that core-periphery is dynamic, mobile, continually being made. The world is not being equalised; it's being divided, but in spatially new and different ways.

Armin Medosch, *Independent Writer, Artist and Curator*

In Conversation with **Shuddhabrata Sengupta,** *Sarai-CSDS*

SS: When you talk about your digital project 'Tales of the Commons', which I find a very fascinating phrase, it suggests that you feel there's a need for us to have a kind of imaginative reconstitution, to remind ourselves what the commons would be. Can you tell us a little more about this?

AM: I see a little danger there because, as we know, the House of Commons in Britain is the seat of the Parliament…and the commons, as part of a Western-centric debate so far (with exceptions like this conference) risks becoming this vacuous concept, this very abstract notion of something that maybe we all strive towards, but we don't really know what it is…

We think that we need to find specific meanings of that; and these specific meanings can be far beyond the virtual, they can be all kinds of commonly used resources, or resources held as a public good.

I am using these kinds of words, with which I am highly dissatisfied. What we need is to give specific meanings to tie this into local and situated stories, and tell those stories, basically.

SS: We know the expression "the tragedy of the commons", which is through over-usage of the commons. Is there another way in which a cultural commons can also diminish through under-usage? For instance, in England you have this tradition of 'walking the commons': the commons are maintained through this activity. Is there a way by which cultural production also requires constant cultivation, in a sense?

AM: I think it absolutely does. I have no moral problems with piracy or with copying, I have no moral problems with concepts like the death of authorship. I think that's a bit naïve. It is as naïve to say that the author dies because of digital technologies, as it is to stick to the author-as-genius picture. I think there are creations that people make, stories that come out of a common cultural background, and there is something specific that is contributed to these stories.

With regard to 'Tales of the Commons': for people to think about it, identify with it, experience the wide space of the democratic commons, we need to find those specific stories, those examples. We need to find meanings, and these meanings often have to do with the fact that no commons just automatically exists. You cannot say that there *is* a commons, that it is a given, that it is written somewhere in law. Yes, there is the UN charter of human rights, but do we have enforcement universally, of human rights? Are these not being trampled upon all the time? So you have to fight for these things constantly.

In terms of the "commons", maybe we also need to find better words for it, for the specific stories that give it meaning. We also need to do this with regard to how a commons constitutes itself.

In this regard, I am specifically influenced by Cornelius Castoriadis, a Greek-French philosopher who talks about the "self-instituting" society. It is a question of choosing between hegemony and autonomy. Here in the West, we have a form of democracy that has become highly autocratic. People can freely go to vote, but their lives and everything they do is determined from outside, from above. The nation state has become an oppressive ruling entity, and the people are not sovereign.

For me, the idea of the commons is linked to the question of "pirate democracy"; it's linked to the question of how people can actually make their own rules; linked to how self-organisation need not be just another formulation of the beautiful magic of the invisible hand, but operate as an expression of people who reflect on their situation; people who have free will, agency; and who, out of their reflections and agency, decide to create rules which they then actually incorporate themselves, rules and values which they carry.

The commons is about people subscribing to their own values, not being forced to adhere to these from above; they will form a self-instituting society, not an instituted society.

SS: You are involved with something called the University of Openness. Would you say that self-education is almost like reclaiming the idea of the encyclopaedists of the Enlightenment – creating a different Enlightenment paradigm?

AM: No. I would shy away from all these words, they are highly problematic. I have become very anti-European. We have to find a new expression of rationality, new expressions of reason which go beyond this. The whole idea of reason, of citizenship, was always exclusionary. The American Constitution was written by slave-owners. We cannot ignore these facts, we cannot repeat those same mistakes.

Therefore, I would not go so far as to say that the 'Tales of the Commons' is about those things that you suggest. We have to be specific, we have to be careful with frameworks such as history, the social, society.

I retreat more to the position of writer and artist because I really find it difficult to debate or discuss by using such categorical terms. That's why my focus is more about the spinning of stories, inventiveness, which captures people's attention and contributes in another way to the imagination; contributes maybe to the emergence of different commons or different modes of self-organisation.

SS: Is there a tale you have for us, a tale of the commons?

AM: I don't know. Today I am confused, actually, with so much information …Also, I am mentally preoccupied with something discussed at the conference. I am not clear as to why the speakers so strongly separated the figure of the pirate and the public domain, which is a sort of commons.

Not *the* public domain, but let's assume that there are public areas, certain publics constituted through different things. Maybe culture, religion, play a role. People come together through all these things. Why exclude the pirate? The pirate is somebody who disseminates things. By doing so, the pirate actually helps to create a specific public domain.

After hearing so much about Delhi's Palika Bazar yesterday, I went there today. I found that there wasn't much software piracy. There were some pirated DVDs and videos, but most vendors actually wanted to sell me Indian soft porn, thinking I might be interested. That's what I encountered the most. Maybe this says something: that these illegal/semi-legal products contribute something to social needs that would otherwise not be satisfied.

SS: In your opinion as a writer and an artist, what violence to the work of the imagination does intellectual property do? *If* it does…?

AM: I think it does. It's basically wrong. As I said earlier, I have a very different notion of authorship: I think it exists, but it is very naïve to claim that in this age of digital technologies, we

have the 'death of the author', that we are scattering the ashes of the author around; and it is also naïve to stick to the idea of authorship as 'genius'.

There is something that authors do, but whatever you do, it is always nurtured from a cultural background. There are a thousand rivers flowing at me, and all that I can do is take a little spoon and take a little bit of the water and move it from here to there. That's something I am doing. But I am not a non-entity in the process. I strongly resist being thought of like that.

And I don't say that it is the work of a genius, what I am doing with my little spoon. But it is something that *is* being done, and *needs* to be done.

With intellectual property, we are dealing with a different concept, which I must say has become much clearer to me at this conference: the idea that arose in the West, the concept of the property of the bourgeoisie, the merchant class. It emerged during the Enlightenment, or since the Renaissance, and became strong during colonialism and imperialism. Here we have the tendency of a monopolistic, exclusionary usage of property, which is absolutely violent.

The idea of intellectual property can never be attached to any artwork or cultural production because these activities are always collaborative. Even when I just sit at home and write, I produce collaboratively, because I use those thousand rivers that flow to me through language, and through other kinds of channels which we create as social beings, essentially.

Jane Gaines, *Duke University*

In Conversation with **Ravi Vasudevan,** *Sarai-CSDS*

RV: Well, Jane, first of all I would like to present you with a gift: a gift which returns to you a copy of that which you authored. This is a xerox copy of *Contested Culture: The Image, the Voice and the Law*, your 1991 book about media and intellectual property. Given your critical stance on the functions of copyright, I'm sure that you'll appreciate it... (presents book, received with amusement...)

Now at the outset, perhaps you could tell us a little bit about the academic and intellectual context of discussions about copyright in the US.

JG: We want to be certain that restrictions on reproducing copies never get in the way of the expansion of knowledge and intellectual pursuits. Take the case of Kinko's versus Basic Books. This is a case dear to the heart of every professor, involving Kinko's, a big duplicating conglomerate of fast xeroxing, a franchise in the US; every campus has a Kinko's store. A group of publishers – Random House, Basic Books, "biggies" in New York – decided to take on the faculty of New York University because the latter had produced what we called the "professor publishing packet", a packet of xeroxed readings. The case argued that Kinko's had only made a half-hearted attempt at getting rights.

Essentially the big publishers in New York wanted to get a message across to the universities. The universities had argued that some important fundamental texts could be xeroxed almost fully. Unfortunately, Kinko's lost the case to Basic Books. This meant that professors couldn't create course packs as per the routine practice. The message to us was that the publishers wanted us to buy books. We have no problem with that, but students are not willing to spend $49.95 to buy a book, of which they want just one chapter. Also, these professional compilations are very creative.

So, here's a case where xeroxing, because of what I call the logic of technology – it's easy to do – allows us the spread of knowledge: the logic of the machine runs into and encounters this resistance on the part of the owner of the original, who then believes that the most important thing is protection.

I wanted to say something about "protection", because I particularly liked the way John Frow framed it. Protection is apparently benevolent, it seems like something everyone can agree on, but protection is actually restriction, if it means that a copyright owner can go in and prohibit. Then what we have is knowledge greatly reduced.

I've just returned from the Modern Language Association, a huge American convention of professors who teach English, German, Italian, French, Hindi too…The feeling at this meeting was that academic publishing is in big trouble. Companies are going out of business. And the concern about books and book sales being down is oddly enough held in check by another development, which is that reading and book buying is down, but writing is up.

In other words, the Internet is producing people writing blogs, people interested in communicating with each other, perhaps they don't even think that they're writing. Professors of English such as myself are very concerned, because the kind of writing that students and ordinary people are doing is often just a mess, the kind of writing over the Internet.

But this question about writing then suggests that we have to rethink what reading and writing mean historically. What does it mean to have a culture, a world culture, where people are using all kinds of languages – and we now have programmes that translate, badly, from language to language – and what does it mean to have a copyright concept, that enables cross-cultural communication, that enables the flow of knowledge?

Historically, it was thought that copyright made it possible to disseminate ideas, the assumption there being that it enables ideas because of the profit motive. Where are we historically, in the academic world, when we think that it's only profit that's driving the dissemination of ideas? I look at my book here, copied, and obviously I'm delighted…!

RV: Much of this has been dramatised by the emergence of new technologies which facilitate access and enable rapid copying and dissemination in unprecedented ways. What kinds of demands does this place on film studies and media studies?

JG: When you sit at a computer and you type in – this is a writing mode, for years we had that typing-in mode – we're using the same mode of sitting before the keyboard to produce images. Perversely, we have an overlap that we never had, historically. One used to produce still or moving images with a camera, images with a paintbrush, etc. Very different from the mode we use to produce writing. So here we are keying in images in words that are coming together. The ease with which we write will probably be mirrored by the ease with which we produce images. And what are we doing to produce students who think in a sophisticated way about the production of images?

My guess is that these analogies, such as editing – when you edit a paragraph in prose form, you cut, you paste, whatever – because we use the terms cut-paste-edit on images, will people be thinking similarly about the two kinds of signs?

I'm having difficulty in getting even getting my literary colleagues to understand that a linguistic sign is one thing, and an iconic sign is another.

And historically we've seen the two in advertising, they come together. We would know in film studies that there is a kind of semiotic relationship between the word that translates the image and the image that also restricts the meaning of the word. In film studies, we have thought a great deal about words and images and their relation. But at this time in history, if we're going to make that analogy between writing practice/composition and image composition, then what's this going to do to the way we deal in images?

Now let's just take Quick Time, the earliest sort of streamed video. Colleagues who talk about the first experience they had with Quick Time often analogise this to the beginning of motion pictures – that the Quick Time image was so primitive, like primitive cinema. It was tiny, it was limited in its time: early cinema was one minute, sixty seconds, one reel; Quick Time was over before you started it…miniaturisation, low resolution, not a great image quality. Compare these images to how one can send images today so easily via computer, and can reconfigure images by compositing. Ordinary people, non-specialist users, can technically do a great deal more, sending, for instance, images in lieu of words.

Where does that put us in terms of our theoretical situation?

RV: The history of cinema has also always been the history of the public, in critical ways. In many ways, the new technological possibilities offered by digitisation arguably disperse that relationship.

Perhaps we now have to think about this heritage of publicness in different ways. Can we think of the publicness of cinema being carried forward within the new technological context?

JG: India is the model for us of a public cinema, and theatre. There's a great deal of mourning in film history about the demise of the theatre, where people go into the public sphere together, they see something together. If a culture has a shared experience of seeing a work – and historically, understanding that – in Indian cinema, these cultures would include mythological characters, familiar music…This public cinema produces a reinforcement of a common culture.

RV: One uses recognition of common cultural references to create affect, and in order to transform perception. It becomes a kind of conduit.

JG: Exactly. You know this myth and it's transformed in a new way; you know this melodrama and it's transformed in a new way. But I'm concerned about the "high" and "low" aspect, because in the US we still suffer, talking as public intellectuals about the cinema, because cinema is still assumed to be a "lower" form than opera and theatre. So we understand a public way, exhibition in a theatre and movie theatre, but also understand that going quickly to DVD of VHS makes it possible for the wider public to see, for instance, Michael Moore's film, *9/11*…Everybody seemed to be seeing it, it was a phenomenon, though of course it was a small segment of the population looking at documentary, on the left. But that's still considered not news, but "entertainment". And entertainment is such a "low" form that it's dismissed and considered historically transient, ephemeral, here-and-there, not deep, even though we're talking about works that speak to cultural concerns and disturbances and political moments.

Is Indian cinema regarded as so "low" that it's dismissed?

RV: I'm not sure. It's complicated, and I think this may have a wider provenance. For a long time, as a mass/popular form, it wasn't a legitimate object of aesthetic evaluation or intellectual reflection.You had art cinema, which was considered legitimate: Satyajit Ray, etc…

JG: *Mother India*?

RV: *Mother India* would not necessarily have the kind of aura, from the point of view of an intellectual culture. But I think that is the peculiar deceptiveness of all kinds of cultural discourse, because you may actually have mass consumption – everyone going to see this thing – and popular film periodicals may also talk disparagingly about the thing which itself is the rationale for their existence. "Official" culture, what the state deems to be legitimate as "art", a legitimate cultural form, may also delegitimise the popular form.

But the actual consumption, the practical investment in this huge form: perhaps it is not dissimilar from what happens in the US. Intellectual culture in France certainly didn't have this problem. The cinema didn't seem to be such a degraded object as it seemed to be in the US. But nevertheless, Hollywood has been a very critical factor in how people imagine social and cultural life, even if within an aesthetic discourse they may talk of the "independent" sector or the "artistic" wing of American cinema. There may be more talk about the *auteurs* of American cinema – Scorsese, Altman – but strictly genre cinema, more generally, has animated one's real relationship to what the cinema is, in crucial ways. Even if you choose to not talk about it, even if you say it is not worthy of discussion. Wouldn't that be true? There's a deceptiveness in cultural discourse…

JG: I think it's very useful to say that there is a deceptiveness or a denial going on. Everyone would go to see Scorcese's *The Aviator*, for instance. "High", elite culture consumers talk about this

film, its point of reference. But don't you also think – Satyajit Ray is a good example here – that the degree to which we talk about directors as "authors" is the degree to which these elite people don't see genre? They consider they're going to see a Martin Scorcese film. The video stores are organised according to genre, but also according to director, depending on your neighbourhood…

Wasn't it also that French cinema was, from the beginning, accepted as the cinema of "authors"?

RV: The "popular art" of the French…

JG: Yes, a contradictory concept.

RV: So all your Renoirs and so on would also be part of the industry, but would also be part of the art sphere. The popular *as* art, in this sense. But I think there are lots of contradictions. India seems to be an extreme case of disparagement of cinema, and I wonder if it's not happening in other contexts. But returning to something discussed at the conference, and for me, something mysterious: your study *Contested Culture* seems to have addressed critical dimensions: of the actual kinds of selling, commoditisation, legal framing of this thing, whether photographs or the cinema, the wider context of cinema, wider commodity placement, culture and consumption. But cinema theory doesn't seem to have reframed, or taken on board, some of the wider constellations to which cinema is quite central in many ways. To talk about screen-spectator relations doesn't seem adequate. I think there's been a little caesura, in this.

JG: You're talking about 1970s film theory, and I wrote this book in reaction against 1970s film theory.

I wanted to say that the legal subject may be as important as the subject situated in the theatre. There was a time in film studies when you got the idea that "viewers", as ordinary people/subjects, were only constituted in the cinema. I thought, "Look, we are making political points by doing close text analysis, and we are actually producing the same analysis of every film." Comolli's article on ideology suggested that the film puts you in a critical position, that there was this ideal film, and sometimes a Hollywood film would make you critical, and you would come out of the cinema and suddenly see the world in a completely different way, because you had been "situated"…

So I thought, let's look at the commodity tie-up, the position of the cinema consumer; your constitution is not restricted to the time that you are in the theatre, you are enjoined to purchase, as a part of the viewing experience. In fact we've seen, since 1991, an increase in this commodity culture tie-up, historically: fast food tie-ups, fashion tie-ups. Everywhere you turn, you are brought back to a cultural venue that allows and encourages you to purchase more.

There is that interest in the legal subject that I felt really spoke more significantly to our situation in a century; the legal subject seemed to me more interesting in relation to how we were positioned in every aspect of our lives.

And if we were called upon as legal subjects, or if we were produced as infringers, or called upon to not copy, or to refrain from using something because we might step over a boundary – this whole question about our constitution as an innocent person who might, in making a xerox copy, or reproducing a book on a xerox machine, be stepping over a boundary – that was something much more interesting to me.

When I wrote the book, I was taking on a premise of cultural studies. Cultural studies is a very powerful tool for analysis, and you can turn it on anything in the world. Deconstruction, for

instance: you can turn the critical methodology on anything, films, poems, sculpture…But it is very difficult to make the analysis produce something genuinely political.

But when I began to read the legal texts, I began to see that the whole history of the last century was one of bending towards interests of ownership, corporate ownership. And I found in the middle of the century, this amazing case on baseball cards. I saw that historically, a right of privacy having to do with individual personhood, the ability to go into the public sphere as a person, was turned around in this 1953 case which had to do with defending the rights of baseball players whose images were reproduced on cards. It flipped over and became a right of publicity. In other words, the anti-consumer, anti-commercial, became a commercial right to publicise oneself.

It was dramatic, and I think it was the empirical, on top of the theoretical, which made me really interested in reading these cases round television, around the protection of the first photograph, star images, the protection of the voice…Perhaps one of the reasons this didn't catch on was that legal texts are difficult to read, that you need special training.

This is what I want to say most of all: that even in the academy there is some resistance to getting on the other side of prohibitions. I have seen a readiness in the academy to restrict our own use. The signs above the xerox machines, 'Copy At Your Own Risk'…

'Fair use' is there to allow academic uses, which are not commercial uses. So the degree to which you subscribe to the premises of my book – which challenge the idea of tight ownership and the corporate analogy with the person, i.e., what I find is that corporations operate like persons – is the degree to which you are in a radical position.

Some scholars, whom I respect very much, said when they read the book, "Well, we're concerned about rights for photographs in our own books, and we're very careful to get those rights." It's actually only a matter of permission. It's like an etiquette: you get permission. But the notion of copyright and its restrictions have been so uncritically internalised on the part of quite sophisticated scholars. People exist in fear of some kind of injunction against their use. Not necessarily commercial.

I'm always interested in the way my colleagues in the law school talk about how in law schools there's no restriction on copying. All these lawyers have read the law, and they know, they'd like a test case…they'd say, "Bring it on!"

Doron Ben-Atar, *Fordham University*

In Conversation with **Lawrence Liang,** *Alternative Law Forum*

LL: The United States is currently at the centre of the Intellectual Property enforcement regime, especially in its war against piracy. The US often equates piracy with terrorism, etc. Yet the title of your 2004 book is somewhat playful: *Trade Secrets: Intellectual Property and the Origins of American Industrial Power*. Can you tell us a little more about this?

DB-A: The reason I undertook this study is because while I was researching my previous book, I noted the fact that though Americans in the 18th century were speaking the language that rejected industrialisation – indeed, the entire American revolutionary project was about rejecting 'evil' Europe – they were also contacting all kinds of mechanics, and violating the laws of European countries so that they could industrialise America. That led me on to an interesting research journey.

I did not expect that during the project I would become an 'Intellectual Property sceptic', as I now call myself. I'm not sure if I am a complete one, I don't know…

Initially I approached it as do most people who are not specialists. But what I discovered was a very strange American phenomenon. On the one hand you had true commitment to intellectual property in the absolute sense, which is truly innovative. The US is the first nation in the world to require someone who has a patent to have worldwide originality and novelty. On the other hand, while they are working this requirement, they are engaging in the most elaborate and successful project of smuggling technology and pirating forbidden know-how from Europe.

The word "Yankee" originated from the Dutch word for smuggler. Nobody knows that. And in fact, "Yankee" ingenuity is a synonym for the great successful American mechanics of the early 19th century. It's true that Yankee ingenuity, the ingenuity of being smugglers and pirates, really allowed the US to become a superpower.

LL: Can you give us a couple of concrete examples of this? What is the technology that the US pirated?

DB-A: Well, the textile industry is the most important example, by far. The story of the textile industry goes back to the middle of the 18th century. The English were very aware of the importance of textiles to their industrial power, political power. So they introduced a set of laws that increased the penalties on the diffusion of technology associated with textiles. So much so that it was much more costly to be caught smuggling textile technology than it was to be caught smuggling iron technology, or other kinds. The textile technology was smuggled by a variety of independent Americans, or by Englishmen who violated English laws.

In the early years after the US Constitution was formed, three men got patents for the Arkwright machinery itself; ironically, none of them did particularly well with that patent. Meanwhile, the most successful pirate of English textile technology was Robert Lowell. He was a sickly American – from a very well-connected Massachusetts family, it always helps – who travelled to England in 1811. He asked his hosts to be allowed to see the factories in Manchester. They had a policy of not allowing anybody in, but they made an exception in his case, assuming that this sickly American was no threat. He looked around, and in the evening he made notes. He came back to America, used his connections, got investors, founded what came to be known as the Boston Associates. He

would die quickly thereafter, but his partners would use the system that he had recorded in Manchester.

It's not only knowledge of the machine that does the carding, but the process, how it's integrated. That's what he really transferred.

The partners established a town and named it after him; Lowell, Massachusetts became the centre of textile manufacturing in the US, and a great rival to English manufacturing. It became so famous that Charles Dickens – who came to America in the 1840s to protect his literary pieces from being pirated by Americans, and had very little of anything positive to say about America, he was utterly uncharmed by it – actually commented, "If you compare this to what we have in England, this is really the good face of industrialisation."

LL: When Larry Lessig talks about the early history of American piracy in his book *Free Culture*, he points out that at that time you didn't have the existence of a multinational IP regime, hence the US was not really violating any laws, since their national laws did not prohibit piracy. How do you respond to this kind of an argument?

DB-A: I would respond in three ways. I've encountered this from lawyers before. First, I'm interested in issues that are more common sense. From the common sense perspective, I don't find this argument particularly compelling. It's true that Lessig would probably win a case in court, the law is its own enclosed system.

The second thing I would say is that the US violated its own laws because the patent law required novelty and originality that was worldwide. By not only failing to enforce it, but also by actually encouraging the violation of it, the US did violate its own laws.

Third, the US violated the laws of other countries. It's true that the international state system we have today, with its coercive powers, is not up to the task. But really, you cannot overlook the fact that American policymakers knew what they were doing, they orchestrated it.

My research includes numerous admissions from the leading politicians of America testifying to an awareness that what they are doing is violating the law of European countries. Those laws have existed since time immemorial. The idea of a fluid individual moving around the world is a modern notion. The individual earlier was very much rooted in his community. He had to get a permit to travel. He couldn't just get up and leave.

Who owned the knowledge? The origin of the knowledge: was it a defined origin? Did it originate with an individual, with a collective? All those kinds of things evolved…

And the US was very quick to capitalise on the cracks in the international state system, and on the great calamity in Europe, the French revolutionary wars which, after all, drowned Europe in blood for 23 years. So in fact, all these things allowed the US to jump ahead.

LL: If intellectual property piracy was at the heart of the making of early America, there is also really a way in which IP piracy is at the heart of the making of the American contemporary. It narrates itself as a creative nation, it almost takes on the burden of being a leader in creativity, etc. It completely narrates itself only within the terms of property and capitalism. Would you think of a supplemental kind of book that looks at the contemporary, and the contemporary myths which pervade the American imagination of creativity…?

DB-A: I think these books are being written, very much so, by people like Larry Lessig, rather wonderful critics of the current state of IP law. I would say that in the US, however, there is an absence of discourse about the way that IP is being used to gain unfair advantage; how it uses American power in the world to force nations like India – as we sit in Delhi today, we hear reports about the Indian new patent regulation which would give up generics, which is quite alarming to most of us – to succumb to American pressure. I think much more needs to be done to raise this issue.

And I think the American position is ultimately self-defeating because the US, like most empires, is now infected with hubris. Greater empires have fallen. And the hubris of power is making the American public utterly indifferent to what the rest of the world thinks of them, of American policy. There is this self-righteous argument that the rest of the world is just envious, therefore does not like to play fair.

And by fair, Americans mean the literal interpretation of economic systems. Intellectual property is a central component of that, given the fact that most industry now takes place outside the US, given the fact that software development is taking place in Israel, Ireland, India…What these companies have going for them is their IP. That's the source of their wealth and knowledge. That is why IP has become *the* most important element of the modern corporation.

LL: I'm interested in an element you just talked about, in terms of the form of the corporation, the form of the modern property regime**,** where increasingly the agency of people is constantly becoming a lot sharper. Whereas in the older system of manufacture, there was still some control – not necessarily just over the IP but also the know-how, the technology in its embeddedness – given the fact that manufacturing was still happening in the US. In today's economic scenario, given the outsourcing of manufacture, there is hardly any of it taking place in the domestic context. So on the one hand you have an artificial IP regime that sustains a kind of power relations between different countries, and on the other hand you have a lot of technology that bleeds into spaces where it otherwise would not have. Where do you think this conflict will take us?

DB-A: Well, I think the American story actually gives us hope on this score. That's where historians come in handy, and lawyers not so much. What happens is that if you've studied American law and American cases, you could be under the impression that America was not a pirating nation in the early 19th century. Similarly, what could give us hope is the fact that enforcement is really not in the hands of the authorities who are in Brussels or New York: enforcement is at the local level. Not even, say, in Delhi, but who knows where, in some local site…

In the American case, local enforcement simply nullified those Enlightenment-liberal claims. I am not willing to do away with IP, because I do consider it, at times, a wise policy for development; never property, but a wise system if properly limited. If you have that properly checked while you have spotty enforcement: this is the winning combination that allowed America to prosper. And I think this is the combination that really is making things work in India and China and Brazil. Yes, they are signing the TRIPS agreement. Yes, they are making these legal concessions. But are they really going to go after all the pirates?

I'm originally from Israel, which is referred to in some circles as a 'one-disk state': in the sense that once the software arrives, it is 'one disk', everybody has it. Enforcement cannot catch up with this ingenuity. I think this is a cause for optimism. The bright side of this is that the enforcement of laws is very often wanting.

LL: How would you distinguish between the kind of IP piracy you're talking about, and the kind of popular piracy that is happening in terms of the digital? I'm asking this because your work is historically situated, hence very interestingly twinned with the history of the nation. But today you have a situation of disembodiedness where the nature of piracy itself is so completely global, commodities travelling on all kinds of networks…How would you look at the difference between what you're doing, and the contemporary context?

DB-A: This is an entirely new problem. One of the most exciting things about this is that the creature called the nation state, which emerged in the 19th century and came to dominate our discourse, really is struggling to cope with an emergent world community that creates; a free software movement of some sort.

I don't have any idea where it is going. I wish I did. And if I did, I probably would have bought stock in something!

If we can defeat the almost instinctual act of nation states that see issues only within the confines of some artificial boundaries and artificial nationalities…

But certainly, what the historical record does show – and here is an important lesson – is that all efforts to restrict the flow of information fail. Those who engage in such restrictions are usually fighting yesterday's battles. For the most part, even in relation to nuclear technology, it's impossible to hold onto those secrets. And therefore, maybe the model that the system operates on needs to be utterly rethought.

LL: One of the things I find utterly disconcerting about some of the progressive scholarship in the US – I'm referring here particularly to Lessig's take on piracy – is that he imputes a certain normative value to transformative authorship, implying that this is how a pirate "reveals" himself. For Lessig, people on the P2P network, downloading and mixing their music, are not a problem because they are adding content to the public domain. Yet when it comes to the account of what he terms "Asian piracy", he implies that it adds no value, contributes nothing; for him, this activity is clearly illegal and immoral. How would you respond to that?

DB-A: I'm completely unsympathetic to this line of argument. First of all, it betrays certain cultural lenses even among incredibly brilliant people like Larry Lessig. No doubt he is failing to see the importance of dissemination internationally. What's going on within this "technology of protectionism", as I would term it, is that now American companies are being warned; this is the next move. Last March, Bill Lockyer, the Attorney-General of California, sent a letter to companies developing programmes that had to do with file-sharing, saying that they should be aware that their products could be used to perform "illegal" activities, in which they would be implicated and for which they could be sued. That kind of logic is similar to warning the car manufacturer that the car is going to kill someone in an accident. It's an absurd argument.

But it goes beyond that. It demonstrates a state of mind that fails to recognise the importance of the free flow of information to development, to human progress.

I'm not hesitant about using a term such as "human progress". And I think that if there's a lesson of the last five hundred years, it is that the sharing of ideas and processes and technologies is not a zero-sum game, but does benefit all.

The entire premise of the patent was not founded on rewarded innovation. The patent laws were created in 14th-century England, when it was a backward nation and the English monarchy

wanted European artisans to come and bring with them more sophisticated producing techniques. And so they established a patent law. This law was for pirates, because those artisans were not allowed to leave their places. In Venice, for instance, the glass manufacturers were locked up on the island of Morano, so that they could not run away with the Venetian glass technology. Even as late as the 18th century, the competing claim of an English manufacturer and a pirate was resolved in favour of the pirate, in an English court. So, suddenly in the late 18th century we come up with IP as a sort of Lockean triangle of life, liberty and property.

Where did it come from? It just makes no sense!

I think that American academics, specially prominent ones like Larry Lessig, are very careful these days not to appear too radical; because if they do, the public is not receptive. Unfortunately, we live in an incredibly conservative environment.

But I don't accept the notion that copying in Asia is 'bad' piracy and that my child downloading via Kazaa is 'good' piracy. One could make distinctions between consumer piracy and process piracy, which is utterly different. Process piracy does lead to further production, and consumer piracy means that my son doesn't have to pay $18 for a CD because he downloads music from Kazaa.

LL: Do you feel your work has propelled you to take a certain kind of activist stance/perspective/role that a historian normally wouldn't have to take? Where do you fit your work? It can, for instance, be used by countries like India to point a finger back at the US…

DB-A: I have certainly been politicised and radicalised by my research. And I had no intention of being so. Historians usually shy away from relevance! It's actually very nice, the way my work has been received well outside the US, without any marketing, which is incredibly flattering. And I would say that I have changed, there's no doubt.

For me to be whole-heartedly involved at this conference is a wonderful thing. I feel I understand the current debate much more now. I think that for whatever reason, the IP policy group is far more successful in conveying a sense that it is an absolute must to see things their way. They say, "Yes, there are some excesses, like Mickey Mouse getting another twenty years. Okay, that's too much."

But the kind of work I've done has shown me that the fundamental premises on which this beast rests are terribly shaky.

Sharon Daniel, *University of California, Santa Cruz*

In Conversation with **Smriti Vohra,** *Sarai-CSDS*

SV: How would you describe your work in relation to your practice as a multimedia artist?

SD: I teach film and digital media in the San Francisco Bay area. My focus is on using information and communication technology in the service of social justice. I try to frame contexts in which disenfranchised and marginalised communities can have a voice in the public domain of the Internet, and also the city. I consider myself a context provider: I'm not interested in representing others, but in creating a space in which they can represent themselves.

SV: Can you describe how you became involved in this project, improbablevoices.net, its content being the intellectual property of women inmates in the California prison system?

SD: I got involved in this project partly because of my experience with 'Subtract the Sky', a software development project I initiated and directed, which takes its name from a method used in astronomy. Astronomers must eliminate the light of all the stars they do not wish to see, in order to capture the light of a single star. Effectively, astronomers must define what "sky" means for every observation. There is no single meaning for "sky", but many, given the perspective of the observer. To "subtract the sky" is to interpret data from a subjective perspective.

'Subtract the Sky' was, conceptually, very much like OPUS, the digital platform for collaborative online work created in the Sarai Media Lab here. Each provides an open system in which people can communicate with each other contributing media objects, sharing in their authorship, categorising and classifying them.

The classification system in 'Subtract the Sky' included a number of highly contested terms such as 'nature', 'culture', 'aesthetics', 'public', 'private'. The goal was to see if language could be re-invented from the ground up; to see if the images, texts and sounds contributed by individuals and groups could open and inflect the meaning of the terms and create new associations for them; to suggest relocating and reinterpreting language through a process of collective authorship.

'Subtract the Sky' is a web application targeted towards the online community. And while I am interested in networked society, I started to feel that I needed to get involved with specific and local communities in order to do something socially productive. I wanted to deal directly with social problems, and see if art using information technology could have a positive impact in the area of social justice.

So I started working with a needle exchange organisation in my neighbourhood in Oakland. I gave their clients cheap cameras and audiotape recorders, and asked them to document their own experiences; I then brought them into a small computer lab that we set up in the organisation's office, and taught them how to use a basic web authoring application, to create web pages where they could post their pictures and stories and audio files. Over the course of working with this community – injection drug users who were primarily homeless, involved in prostitution and other crimes of survival – I learnt more and more about the criminalisation of poverty and the injustices of the US criminal justice system.

My friend Cassandra Shaylor is co-director of Justice Now, a non-profit, human rights organisation that supports the rights of women prisoners in the California state prison system and works with

women in prison in an effort to build a safe, compassionate world without prisons. Cassandra, her co-director Cynthia Chandler and I started a dialogue about how I might do something meaningful in collaboration with their organisation that would result in getting the voices of women prisoners out into the public domain.

Justice Now got me into the prison in Chowchilla, which wasn't a simple thing. In California there is a "media ban" on visits or contact with prisoners. No one, basically, except lawyers and family members, is allowed to visit. Members of the media or journalists (which is what I would be considered by the authorities) are not allowed to have conversations with prisoners unless the dialogue is controlled and monitored by the prison authority. Justice Now had me cleared to enter the prison as a legal advocate; I was able to enter by pretending to be a lawyer or a legal intern.

So I started going to the prison and meeting with women who are peer organisers within the prison, women who have a long relationship with Justice Now. The organisation assists incarcerated women in cases of medical neglect, and compassionate release, physical, mental and sexual abuse. Peer organisers bring other women who are having problems with the prison into contact with Justice Now. They identify women with needs, and approach them saying, "Look, if this guard is sexually abusing you, or you aren't getting proper medical treatment, you don't have to tolerate that, you need to talk to this organisation…" I have been going to the prison for approximately two years now.

Initially, I went on three or four visits and met about 10 women. I knew I needed to find a way to make these women's voices heard. So we managed to get a mini-disc recorder cleared by the prison bureaucracy, and I started recording each visit.

The conversations are directed by the women. I ask them to identify their issues, and talk about them: from conditions in the prison, to their personal history, the situations that other women are in, their legal cases, their political stand, that sort of thing. Improbablevoices.net is just one attempt to make this material available to the public, so that people would become aware of the situation within the criminal justice system, and the prison industrial complex.

SV: What exactly is the prison industrial complex? We don't have much information, other than the general sense that there's a huge monetary investment in this, by the state and by corporations…

SD: In the 1980s, there was a shift in the political climate around crime and punishment in the US. While the overall crime rate was decreasing, stricter sentencing laws were put in place. Minor crimes were given much longer and much tougher sentences. This led to an explosion in the prison population, huge private and state investment in prison construction, increased political power for the Prison Guards Union, and the emergence of private industry within the prison system. 'Prison industrial complex' refers to a corporate/state collaboration in which both the state and the corporate state profit from the incarceration, on a massive scale, of marginalised communities and people of colour.

The state ensures an ever-increasing population of prisoners to serve and be served by the prison industrial complex. On the one hand, prisoners are forced to do work for slave wages – 11 cents an hour – for large corporations that set up industries within the prisons, even within public/state funded prisons. And on the other hand, the basic needs of this large population of prisoners, like catering/food, medical and telephone services are provided through monopoly contracts with big corporations like Marriott and MCI.

The telephone service is a great example of how the state allows corporations to create monopolies that simultaneously profit from and destroy economically marginalised communities. Inmates can make collect phone calls from the prison only to people who have MCI as their long distance service provider. And the rate for a long distance collect call from the prison is five times what the same long-distance collect call would normally cost. It's really harsh also because the calls are interrupted every 20 seconds by this taped voice saying, "You are talking to to an inmate at such-and-such prison"...

Many families have difficulty getting an MCI account and maintaining it. This can be an insurmountable obstacle to working-class, welfare-dependent or impoverished families who don't have the credit rating required to open an MCI account, or the money to pay the arbitrarily inflated long-distance charges. Many prisoners are not able to maintain contact with their families for this reason. It is not difficult to imagine the negative impact of this sort of isolation on prisoners, and the long-term effect on their children, their families and their communities.

"Prison industrial complex" is "short-hand" used to describe the set of relations, or systems, by which profiteering and political oppression are promoted in the guise of justice.

SV: What space does the prison, as an entity, occupy in the American imagination, in public consciousness? People are not indifferent to it. The prison industrial complex is debated, featured, interrogated…

SD: People are not indifferent, but they do not have enough information, and often what they get from corporate media is inaccurate. People would change their assumptions if they were more aware of the social conditions that lead to crime and subsequent incarceration, the draconian sentencing guidelines that allow extremely young offenders to be given what amount to life sentences for petty and victimless crimes, the discriminatory conditions under which prosecutions are played out, and the inhumane conditions within the prison.

There's a kind of political capital attached to "tough on crime" legislation, for politicians who court the largely white, middle class vote…Middle class people think, "Oh, that's good," when they hear 'three strikes and you're out', which is a law in California.

In the public imaginary, 'three strikes', a term from baseball, makes people think, "Oh, this means strong action will be taken against repeat offenders who are child molesters, serial killers, mass murderers, they should be put away forever." But most people don't realize what how 'three strikes' really works. A felony conviction can be a victimless crime, like drug possession, or prostitution. If you happen to have previous felony convictions for drug possession or prostitution and you get picked up for a misdemeanour like shoplifting or a "gang-related" crime like throwing a beer can at a police car in a "gang"-identified neighbourhood, you can end up with a life sentence – even if you are under 18 years old. People don't realise that someone can get picked up for drug possession twice – the second time, the sentence is automatically doubled, no matter what the circumstances are; then years later, that person could be arrested for shoplifting, and end up with a life sentence, even if the previous convictions for drug possession were prior to the date when 'three strikes' was signed into law. 'Three strikes' is applied retroactively, which is in violation of human rights as per the UDHR. I think we would be able to rescind this law if the American public really understood what it means. But they don't. I think the government, which is one of the partners in the prison industrial complex collaboration, takes care to make sure they don't. Hence the media ban. There was a recent proposition to decrease the severity of the 'three

strikes' law, and it seemed that it was going to win, but at the last minute our governor Mr Arnold Schwarzenegger launched an expensive media campaign against the proposition, which then lost. For Beverly Henry, one of the first inmates I talked to, this meant the difference between 120 more days of incarceration or six more years.

SV: It's interesting that on the one hand there's a media ban, that journalists have no access to the prisoners or to authentic information about conditions in prison, data which would be filtered, censored, made palatable by the authorities. On the other hand, there's also a media glut – for instance, the massive media spectacle when lethal injection was administered to Timothy McVeigh, the Oklahoma City bomber. Wasn't that shown on TV as pay-per-view?

SD: Was it? I don't know. But I'm not surprised, actually.

SV: After *Dead Man Walking*, the whole world is familiar with the lethal injection scenario. That's a Hollywood interpretation. But it's also a fact that in the US, on prime time TV, Monday to Friday, you have a sustained imaging of the criminal justice system in various modes, as popular culture. Police drama, court cases, forensic investigation, detective shows; all hugely popular. So the issue is also about how the general public is conditioned to view law enforcement. Prisons are the logical, material end of the regime. But the whole relationship to the prison system begins with TV images – of the lock-up, the violence, the pathology of perpetrators. The dialectic of predation and retribution is enacted in full colour, every night. You also have the reality cop shows, the docu-drama of raw footage, where you see the freeway chases, "criminals" from poor neighbourhoods being exposed on camera, blinded by lights as they are shackled, slammed onto cars, searched…In this sense there is indeed constant media presence, with respect to the criminal justice system.

SD: The images produced by Hollywood are mostly a celebration of the criminal justice system as an institution that represents mainstream American values, and since these images reinforce stereotypes around racial and economic difference, they are hugely popular, definitely. In popular culture, there are very few fictional accounts of the system that critique it, and even fewer that realistically represent the social conditions that lead to criminalised behaviour and the incarceration of massive numbers of impoverished people of colour in the US. The criminal justice system is a high-profile spectacle in popular culture; but the conditions in prison, and the existential conditions of the people most affected by the system, are not understood. People in America remain ignorantly proud of their democratic system without acknowledging the system of oppression it has generated. People in the US assume that the US Constitution is the greatest, the most just law in the world, and it therefore protects the rights of all those who deserve to be protected. But it's not. It was originally written to protect the rights of privileged property owners, and despite the Civil Rights amendment, it provides very little protection for prisoners in the US, and creates only weak provisions that allow human rights to be violated.

SV: What obstacles did you face from the prison apparatus, once you began to engage with it? How did you prepare yourself for such an intimidating experience?

SD: Going to the prison is a very difficult experience. The visits require the acceptance of invasive search and surveillance procedures. The environment is extremely oppressive. But to some extent I feel ridiculous saying that it is difficult and oppressive for me, given what the women incarcerated there have to live through, day after day...

It's a three-hour drive from San Francisco to the prison, so it becomes a very long day, going there, doing the visitations for eight hours, driving back...Eight hours might seem enough time, but

actually it's not, because the visits are interrupted by what is called "the count": when no one can move around and all the women are returned to a holding cell where they are counted to see that no one is missing.

Visitors are searched upon entry. We are allowed to take in a clear plastic bag, a clear ink pen, an ID, driver's licence, eyeglasses, and a legal file for documents. We go through a metal detector, take off our shoes, turn out our pockets, all of that...The mini-disc recorder has to be cleared two weeks in advance – the serial number is submitted then, and checked on the day of the visit. Each part is inspected and enumerated. Everything you bring in, you have to bring out. The discs have to be factory sealed. It is absurd...

The place is a horror. Concrete blocks, dingy, grim, overcrowded…to enter, you pass through three 20-foot-high razor-wire fences and three electronic security gates that cost $3 million to build. You are surveilled from the moment you arrive in the parking lot; there are guard towers everywhere. Between the razor wire and the visiting room there is a manicured rose garden that looks like a middle-class suburban lawn. A bizarre artifice in comparison to the rest of prison grounds where the earth is bare, there is no shade, only dust and extreme heat…

Once inside, I always have to make a decision between sitting in a private legal visit room or the large common room used for family visits. If I ask for a legal visit room, in order to ensure better audio quality, there is a higher risk that the prison authority might also be recording my conversations – it is generally assumed that they are listening, even though it is a violation of the prisoner's civil rights. Once, during a visit in one of the private rooms, during a pause in the conversation we heard the sound of electronic feedback – like when a microphone is held too close to a speaker – the sound came from the heating circulation vent in the ceiling…

In our conversations, the women offer their critique of the prison industrial complex and tell story after story of human and civil rights abuses in the prison. These women are highly politicised and seriously committed to having their voices heard. But I worry about retaliation – the women take the risk consciously, but they are vulnerable to all kinds of abusive retaliation by guards and administrators, including the possibility of false charges that could lead to a second or third 'strike'.

The worst thing – our visits are "contact" visits, we are not separated by the piece of glass and telephone set that you see in the movies – is that when the women return to their cells after speaking with me, they can be subjected to a strip search or visual body cavity search that might be conducted by a male guard. When I go to the prison, I think about that. It disturbs me. I feel responsible for it.

So, I try to do the best I can to make the visit worth *that*, for the women. I have to make sure I get what they're saying, and that I do something meaningful with their intellectual property.

To prepare myself before a visit, I try and think, the night before, of the nice thing I'm going to do on the evening after I return from the prison visit, something really frivolous and pleasurable. And, during the drive to the prison, and while I'm passing through the metal detector and when I walk past the guard towers and the razor wire and through the gates, I just keep saying to myself, "I get to leave, I get to leave, I get to leave." If I didn't think that, I wouldn't be able to make myself go in.

SV: In your presentation at this conference, you had mentioned certain kinds of deprivation the prisoners continually experience. One kind, of course, is the larger overall deprivation of freedom

itself. Visitors can leave, family members can leave, guards can leave, but the prisoners cannot. Within this, what are some of the daily deprivations that corrode the spirit, so that when the time comes to take a stand against some aspect of the system, the necessary energy is not even there?

SD: There are so many. I think the most serious deprivation is psychological rather than physical. Inside prison, the women don't have the status of persons. They can't expect or assume that they will be treated like human beings. Most of them have talked about this in one way or the other. For example, when I asked Zundre Johnson to write her bio, she used phrases like "I'm not a number", "I have a name", "I am a woman with children who bear my name". Many of the women say, "I need to be recognised", "I have a right to be treated with dignity."

And the ways in which they are deprived of their human dignity are myriad. There is abusive behaviour from the guards: there is physical and sexual abuse, but also mental and emotional abuse. A woman's cell and her belongings can searched, or "tossed", at any time, and for no reason. There's medical neglect. The way the prison handles medical treatment is really obscene. Women have to wait for weeks, months, to be treated for something that could be cured, but because it is not treated, becomes lethal. A ten-year sentence for robbery can become a *de facto* death sentence. The conditions within the medical facility are horrific, and apparently the medical technicians who have to care for the seriously ill women are less than compassionate. There's overcrowding, eight women in a cell originally designed for two. There's the fact that guards commonly pit prisoners against one another for sport or retaliation, often creating a situation whereby a prisoner is forced into an altercation that might lead to prosecution and another 'strike'. There is alienation; loneliness and constant fear…One of the women described it to me as "just shutting down". She said, "I can't communicate with anyone, I can't be close to anyone, I can't have any interaction because I'm afraid it will lead to a fight, a case against me, my third strike, and I would never see my family again." That's one thing the women talk about a lot – the loss of contact with their families and separation from their children. Another woman told me that she didn't dare show emotion or weakness for fear of being put on psychotropic drugs. Apparently, while it is very difficult to get adequate care for a physical illness like diabetes, psychotropic drugs, which make the women who take them more manageable, are readily prescribed.

There's also the food, another thing the women talk about a lot; it's a daily concern. The food service is horrible, and the prisoners are only given 15 minutes, total, for a meal. There are so many inmates, they are herded in for meals; you have to get your tray, sit down at your place and then you have the rest of your 15 minutes to eat your meal. There are no special diets for prisoners with health problems that call for special diet, like diabetes.

There is also the "generational cycle", where incarceration becomes part of the family heritage. Each generation ends up in the system, because each generation has to live with the same social problems that caused the previous generation to enter the system, and has to endure the loss of that previous generation to the system. There is actually a case of a mother and her three daughters all incarcerated in the same prison. There is no rehabilitation, only the decimation of families and whole communities.

SV: Has your work on this project affected you in particularly significant ways, as a person?

SD: I think the first time I went into the prison was a big life-changing experience for me. It's one thing to have a political point of view that you hold on to in an intellectual way, and that's how I thought of prison rights before I actually went into the prison and had a conversation with a

woman named Beverly Henry…After that first visit, my political position became a personal philosophy, one on which I would have to act.

I was already, through my interaction with the clients of the needle exchange programme, in a position to distrust the police and the system, but I hadn't actively critiqued or rejected the system as such. We have a jury mechanism for certain trials, and last year I was called for jury duty. By random selection I was listed as a potential juror for a criminal prosecution. I decided, before I heard any of the facts of the case, that I could not participate in a process that could lead to the conviction and incarceration of any person, no matter what that person might have done.

This case was an armed robbery. I've been robbed at gunpoint, so I was in a position to understand the victim's perspective. I was so frightened that I was not able to describe my assailant five minutes after the robbery. All I could remember was what the gun looked like and that the man was black. The case for which I was being summoned as a potential juror had occurred in 1996, and it was to be tried in 2004. I wondered how the witnesses would be able to identify their assailant. While the judge, prosecutor, and defence attorney would not tell the potential jurors why the case had been postponed for eight years, my best guess was that the defendant had been incarcerated for another crime during that time – that would trigger 'three strikes' sentencing guidelines.

The accused was a black man, and the possible jury panel was primarily white. The situation had all the potential makings of a wrongful conviction. Potential jurors had to fill out a form that asked if we had any problem with the police, if we had any personal connection to the defendant, victim, police involved, etc. I just wrote that I am a prison abolition activist: "I don't believe in the criminal justice system as it is currently constituted…I will not participate in sentencing anyone to prison for any reason…"

I was interviewed the following day, and the prosecutor asked me if I couldn't just ignore the question of sentencing. I said, "No." He asked if I couldn't be fair and impartial, and I said I didn't think anyone could be fair and impartial. He said, "Couldn't you just trust the system?" I said, "Absolutely not. I can't trust a system where there is the prison industrial complex on one hand and 'three-strikes' on the other."

Obviously, I wasn't empanelled on that jury.

What I have seen has convinced me in no uncertain terms that the current criminal justice system is not the right solution for the kinds of social problems that it's supposed to solve. The prison industrial complex is essentially a contemporary version of the institution of slavery. I have to act on that knowledge.

SV: Brutal systems exist in all countries. You can go anywhere in the world, look two feet in any direction, and you will see something that makes you want to close your eyes forever. But the point is that one should not close one's eyes, one has to look, one cannot avert one's gaze, otherwise change will never happen.

The prison you worked in, the range and nature of this work of being a context provider for the articulation of the intellectual property of inmates, and the people you've come in contact with through the work, inmates and their 'keepers', both: all this is now part of your vision. But when you look within, what is the insight, so to speak, in terms of your own subjectivity, and your practice as a multimedia artist?

SD: As a practitioner, I've been gradually moving further and further away from what most people think of as art practice. In a sense, my practice has become ethnographic. And then there is the question of the connection between art and activism. I want to act for change. I've often thought, "Maybe I should just drop this whole new-media art thing and become a lawyer, then I could really accomplish something." I've never really been that interested in art for its own sake or technology for its own sake. My focus is on what art and technology can do in the social realm; and it can be both a boundary and a bridge.

I was talking to Danny Butt yesterday while we were walking around the Taj Mahal, and he offered a wonderful quote from Lilla Wallace which I'll paraphrase: "If you've come here to help, you are wasting your time; but if your liberation is bound up with mine, let's work together."

That's how I feel about this project. I can't be free till the women in prison are free. I can't be safe until the injection drug users are safe. But I can deploy whatever resources I have, however limited they may be, in that direction, towards that end. That's what I want to do.

Naveeda Khan, *Johns Hopkins University*

In Conversation with **Shuddhabrata Sengupta,** *Sarai-CSDS*

SS: Can you elaborate on how the problem of 'becoming a Muslim' has anything at all to do with intellectual property rights? I am asking this with reference to the paper that you just presented where you talked about a certain community, namely Ahmadiyas*, stand accused in a court case of being 'counterfeit' Muslims, and how a theological controversy is sought to be resolved as per the criteria of Intellectual Property Law.

NK: In my conference paper I sketched three strands of legal thought in relation to the Ahmadis that I saw emerge in Pakistan, between the 1970s and the 1990s. First, I gestured to the standing language within the Islamic tradition of how a good Muslim is a pious imitation of the Prophet. (This language, already very rooted in daily life, gained saliency for the political present of Pakistan through, for instance, the *ulema*-led anti-Bhutto Nizam-e-Mustafa [the Order of the Prophet] Movement of the late seventies). I also showed how this language of pious imitation echoes within a conversation in the Pakistani courts as to whether the Ahmadi is a 'good' or a 'bad' copy of a 'good' Muslim – who himself or herself is at his/her best an embodiment, a pious imitation of the Prophet.

Finally, my paper moved to an extraordinary judgement rendered by the Pakistan Supreme Court in 1993, suggesting how these prior strands of thought tentatively using the language of the copy to demarcate the Ahmadi from the Muslim – Ahmadis being the copy, and Muslims being the original, this demarcation being complicated by the fact that Muslims are themselves imitations – can converge into a third and distinctly separate strand. Within this strand of thought, the notion of the copyright/trademark may be invoked to characterise the exclusivity of enduring aspects of Islam (such as the call to prayer, modes of ritual practice, building of mosques, etc.) for Muslims, therefore, making clear, almost commonsensical, the nature of Ahmadi infringement upon Islam and their violations of what it is to be Muslim. Moreover, this mere invocation of the copyright/trademark appears fecund in legal and pedagogical possibilities by which to cultivate Muslims to prevent further the Ahmadi encroachment upon inherited, now exclusive, modes of being Muslim.

It was also interesting for me to see how the copyright/trademark was invoked. The standing law attending to the copyright/trademark was not extended to religious beliefs and practices. Rather, the Supreme Court wondered what an analogous set of intellectual property rights within the religious domain would look like, and how one might go about articulating them. However, at the same time, in and through this invocation it was as if modes of being Muslim became effectively copyrighted in imagination, if not actually so. But this final statement is speculative.

SS: How would you say that the understanding of intellectual property can gainfully engage with elements of cultural studies and history, which essentially deal with what we are talking about, the production of selves? My question here is whether the self that someone produces is verifiable or not. I think that's uncertain. That's part of a fascinating array of questions of surveillance, identity, identification and authenticity.

NK: Of course anthropology, the discipline I am in and am most familiar with, does bring to debates over intellectual property concerns over the production of selves, and how the making of

these selves are rendered problematic in a world in which copyright/trademark exerts increasingly stronger and stronger hold. At the same time, as you pick up very nicely in your question, it is not simply the loss of creative licence of the self to the world and its constitutive elements, but that the very procedures by which commercial rights are articulated and protected and objects authenticated should enter into processes of making selves. This entrance makes selves subject to new criteria of verification, criteria that are perhaps not as explicit as they might be in the domain of objects, suggesting how slippery the slope is for the modern self, with the ever extant possibility of the slide into, as you say, uncertainty.

Yet, as I don't focus on how Ahmadis or even other Muslims subsequently interact with this 1993 judgment of the Supreme Court, or on the field of influence emanating out from this judgment, I unfortunately cannot speak to the profound shift that you are sensing, even within my paper. Instead I would like to bring into focus an aspect of my paper which may have something else to say about what anthropology is bringing to the IP debates. In anthropology, at least in the way it's being talked about in the institution I'm a part of, there is considerable attention being paid to affect as it infuses thought. One must be attentive to the affect saturating or being initiated within a given assemblage of concepts, social fields, practices, etc.

This is not simply to say, as Peter Jaszi suggested in his talk yesterday in characterising the difference between cultural studies folks and lawyers, that "the cultural studies folks are tapping into the domain of culture". Affect is not culturally pre-given. Nor is culture as stable as Jaszi's preliminary comments suggest. Rather, I would insist that the understanding of affect that is most useful is one for which there is no cultural precedence, but one which is able to sense where culture may yet go.

So with regard to the 1993 judgment, what I find really interesting in the Supreme Court's discourse is that it is expressing the desire for a certain relationship between a law, an affect, and a bodily recoil to found a set of rights analogous to the copyright/trademark within the religious domain. It is legal thinking infused with affect in its expression of pure possibility, of an opening into the future, of getting past a certain impasse over what it is to be a Muslim; this is what grips the imagination, rather than the delineation of new, more effective means of surveilling and punishing Ahmadis. Of course, the potential for the later effect cannot be denied either.

SS: And if we take the question the other way round? What can someone working in anthropology, working with cultural material on, say, the transformation of selves, take into the understanding of intellectual property?

NK: If I may be permitted to continue our earlier mutual line of thought around surveillance, it seems to me that a knee-jerk projection of Foucault's notion of governmentality, of the management of populations and individuals, onto any sort of statist discourse or action, a projection prominent no less in anthropology than in related disciplines, seems very problematic. It seems to me that it's also not theoretically or empirically feasible to point to the emergence of disciplinary regimes, because I am not sure that states operate with the same rationale across the board. If anything, in and through the IP debates, a fraction of which I was privileged to witness in this conference, I only hear about the powers of the copyright/trademark intrinsic to itself even before it is yoked to state power.

Within this domain internal to the copyright/trademark, copyright, as it is emerging, is not entirely sure of its own future. And that, it seems to me, is what everybody is trying to get at here

today: that copyright is operating in lots of different sites, in lots of different ways. Sometimes it's harnessed to rights of access, of information. Sometimes it's harnessed to the conversation around the critique of authorship, etc.

So in a way, what this conference really points to is the capaciousness of this legal genre, and the necessity for cultural studies, then, to attend to the fragility of the legal genre itself, its insecurities and its uncertainties; and not to think of it as an already done deal, as always already harnessed to the surveillance of the state.

Therefore, in my paper, when I say the Supreme Court of Pakistan is trying to raise the state, or the ordinary Muslim, to the eye of God, that is not necessarily a negative thing. It's not necessarily about knowing all things at all times. It's also about a certain kind of divine glance on its own creation, which could be at times warm, loving, affectionate, but also at times vengeful and exasperated. And it is about moulding oneself in accord with that glance.

So I don't see the harnessing of copyright to the discussion of who is a Muslim within the framework of the 1993 judgment as an immediate curtailment of rights, as an immediate extension of the surveillance of the state. I see it as an interesting move which has both threats and possibilities, some of which I have tried to sense here.

*__Ahmadiya__ is a religious sect, founded by Mirza Ghulam Ahmad Qadiani in 1889. Mirza Ghulam Ahmad was born in a small village called Qadian in Amritsar, East Punjab. The followers of Ghulam Ahmad are known both as Ahmadis and Qadianis.

In 1889, Mirza Ghulam Ahmad announced that he had received a divine revelation authorising him to receive the allegiance of the faithful. He later also declared himself the Mehdi and the Messiah. After his death, his followers elected Maulana Nuruddin as his successor. Following the death of Nuruddin in 1914, the community split, with the majority remaining in Qadian and recognising Ghulam Ahmad as prophet. Since 1947, this branch, the *Jamaat-i-Ahmadiya,* has operated out of Rabwah, a town which they founded in Pakistan. The other branch recognised Ghulam Ahmad as a reformer and established what came to be known as the *Ahmadiyya Anjuman Ishaat-i-Islam*.

There are followers of Ahmadiya (known as Ahmadiyas) in many countries, with a concentration in the South Asian subcontinent. In Pakistan, Ahmadiyas have been declared 'Non-Muslims'.

Many tenets of the Ahmadiyas are similar to those of orthodox Islam. They revere Hazrat Muhammad, consider the Quran to be revealed scripture and respect the Ahadith as examples from Prophet Muhammad's life. They also abide by the call to offer *namaz*, *zakat* and keep the fast of *Ramzan*. They differ with other Muslims on the finality of Hazrat Muhammad's prophethood, and on details of the crucifixion and death of Jesues as well as on the role to be played by Jesus on the day of judgement.

(adapted from the entry on Ahmadiya at http://banglapedia.search.com.bd/HT/A_0103.htm)

Danny Butt, *Independent Consultant*

In Conversation with **Anand Taneja,** *Sarai-CSDS*

AT: You grew up in Australia and moved to New Zealand; your work focuses a lot on Indigenous conceptions and what these can say to Western academia and Western modes of thinking about identity and about property, among other things. Could you map that trajectory for us, in more detail?

DB: I'm from Newcastle, on the east coast of Australia. I spent my first nine years there. Meaghan Morris, the renowned Australian cultural studies scholar, is also from that region, and so is the Marxist theorist McKenzie Wark, who is attending this conference – I would feel honoured to have a place in this tradition!

My teenage years were spent on Australia's Gold Coast, a kind of tourist resort modelled on Miami Beach. It's interesting, I think, to grow up in a place where there is no sense of authenticity available to you in your immediate environment. So when I moved from Australia to New Zealand, one of the things I was thinking about a lot was how to make sense of the difference between those two spaces.

On the one hand they're very similar, because I can move to New Zealand without any trouble, I can operate culturally there, even though there are these nationalistic discourses that proclaim difference through sporting teams, cultural jokes, etc. But what is extremely different is New Zealand being settled by Maori/Polynesian peoples, and Australia having Indigenous people with a very different social structure and relationship to the land for many tens of thousands of years. This seemed a significant difference to me, and it led me to wonder why no one told me about those differences when I was growing up; why as a white settler, I was not expected to engage with Indigenous people. I had no idea at all who they were as people rather than as figures of history, not that I was even given much of that. There was a single class at school on those issues, and it was for Aboriginal students.-

I learned some of it through Australian cultural studies, but I was discovering it on my own, I had dropped out of the academy to play punk rock music in Sydney, and it was the music community that eventually took me to New Zealand. So there were a lot of factors, but it was the move and the constant shuttling between Australia and New Zealand that led me to think about the relationship between these two white settler colonies – which brought up for me the question of what happened, historically, in each of these places.

What I've discovered through my engagement and work with Indigenous peoples, their political struggles, and their ways of life is a real sense of place and location, and I think these have a lot to offer Western thought, essentially…The struggle of Indigenous people for their rights has focused around issues like the natural environment, cultural rights; their issues address the blind spots in Western political theory that are nevertheless popular areas of political and social tension. One of the things I noticed when I started working in the academy was how few Australian and New Zealand scholars took this work seriously, how few familiarised themselves with Indigenous people, their cultures and aspirations, as something to be learnt from, rather than something to be studied and that knowledge trafficked back out to European academia, which has been the dominant anthropological mode.

That encounter has led me to much deeper questions – about cultural practice, about the limits of language, about how we learn from each other, our engagements with each other – that are very central to the whole information society and economy debates, for example, and debates on cultural industries, cultural economies…My work in relation to Indigenous issues has been very useful for framing those questions in my own thinking. In general, most such discussions have been framed within what seems to me to be a useful but very limited set of political discourses within Western political theory. The struggle of Indigenous peoples is one of the most important struggles emerging…it talks about cultural processes and rights outside of the sphere of nation states. That's very important. I grew up in an ideology of cultural nationalism; and the more I learn about the world, the idea of the nation-state defining the boundaries of cultural and social practices seems to me to be a pernicious force in so many ways that I can't believe no one ever told me.

AT: At this conference, you gave a critique of "disembodied knowledge", and of the Western conception of property that is largely about the transfer of property. Is there a tension here, of these ideas in relation to ideas about the global free flow of information that's also being discussed at the conference?

DB: The global free flow of information versus embodied knowledge…? Yes, that's a tension, and I think Rosemary Coombe's work addresses that tension quite well. She makes the point that the assertion of Indigeneity into global forums, or the assertion of intellectual property rights over Indigenous knowledge, are absolutely defensive mechanisms. They're not necessarily things that Indigenous groups feel they need to do, they don't want to sit around in international forums advocating for their rights, but they've been subjected to those global flows and are seeking to divert them.

It's also a tension for people who have very strong connections to particular locations, to do this defensive work in the global information sphere, seeking to protect the rights of others in analogous situations. It's a productive tension, also an unavoidable one that we need to think through.

If we are going to be critical of the flows of global institutionalised capital and what it's doing to the world, we need to have a very clear understanding of our own investment in that process, and how we are located in relation to that process, and how that location constrains our ability to think "the global". Otherwise our critique maps itself onto the same territory as global information capital; it has no base, it gets caught into a logic of assimilation. You see this sometimes at conferences on intellectual property – it moves into a game of words, where people promote their competing visions of the "global", each claiming to be more able to accommodate a wider variety of situations, attempting to find synthesis across disparate areas. And there are limitations to that.

If we look at the movements that actually inspire people towards political action, they're embodied; they're about things that we feel in ourselves. There's no such thing as knowledge that isn't embodied. The information economies discussion, for example, or the globalisation discussion as it's articulated through Western political theory, is embodied in a particular way, unselfconsciously, that prevents access of people into that discussion.

We were talking at the conference about the free software movement and the threat it poses to information exploitation. However, the empirical studies of the free software movement show that 98% of the respondents to the studies are male! To me, that's not a marginal statistic. It is something that makes a point about the ability of the free software movement's claims to liberate

the entire world – we're missing half of the world, there. But we can have a language that says, "Well, in time we'll eventually be able to include the missing; we'll work on our deficiencies, and improve them." If we don't do this, if we assume that this lack of representation is some accident of history, we can't renovate it into the global movement it could be.

It's the same issue with global modernity and development capitalism, which says, "Well, eventually the developing world will gain part of this bounty." In fact, if we look at it, global capital is constituted on this divisioning, this subalternisation of the rural developing world. And I'd say the same thing about some of the rhetorics of global capitalism and the information economy. They are constituted in what they exclude from that discussion. That's the lesson one learns from feminist theory, where an analysis of these kinds of exclusions has been repeated for a long time.

AT: Some of your research that I've read seems to have an angry punk rock energy…What are the Maori saying to the punk rocker, in your work?

DB: Usually, "Chill out and relax…!"

AT: You've been in the music publishing industry, which also deals with embodying property, in a sense. Now you're looking at both embodiment and property from a different angle. What are the Maori telling the punk rocker, in this regard…?

DB: The encounter with Indigenous knowledge provides me with a number of things that are important to me. One is a way of imagining another world in a very embodied and concrete manner…as much as I always attempt to deconstruct a romantic figuring of the Indigenous as primitive or non-modern, I don't want to disavow the romantic aspect of it in my own desire to learn more about other knowledge systems. Peter Linebaugh's presentation at the conference brought that out: the romance of a particular historical narrative. It's about the engagement with the 'other' that has driven a lot of my own work and that of many people in various fields.

But very concretely, Maori epistemology brings in a textual relationship that allows me to feel grounded and in place where I am – perversely, this happens by undermining any latent feelings of "rights" over the land where I live. In the two countries where I have lived, Indigenous empistemologies provide examples of social relationships that rely on situated knowledge. The fantasy of white liberal egalitarianism that I was brought up on completely lacked that sense of location, of subjectivity…the history I was given was literally science fiction.

And the Indigenous political struggle is a very important one. It is anti-colonial, an interdisciplinary political activity that is not limited to spheres of economics, or racism, or issues of environment – it brings all of these things in together. That seems to me to be very important for the Euro-US left, consumed with single-issues, to come to terms with.

The other thing is that my engagement with the Indigenous people where I am gives me a very strong sense of history, and of the importance of time and the value of time. James Clifford tells a story of an Indigenous woman from Alaska, who said that what was happening since the Russians came was just a storm that would eventually pass. She wasn't even worried about the US occupation! This is a long-term perspective of cultural survival that is very humbling for someone like me, who grew up believing not only that you can change the world if you try hard enough, but that would be a good thing. Far from true.

So I don't know if I would consider myself a punk rocker these days! That moment and that politicisation were very important. Of the people that I know who are working in the Western

epistemological tradition, a lot of the ones that I really like have this sense of being involved in something – whether it's civil rights, or punk rock, or hip hop, or some politically charged social movement. That's the work I'm interested in.

The question I turn over a lot is, "What do I bring that is useful, into an Indigenous environment?"

It's a vexed question. For the Maori, most of their engagement with white culture has had very negative effects. Why would my input be any different? It's a very different space to negotiate, and one in which I am not always sure I'm doing the right thing. But I go into those spaces and try to be honest about what I'm doing, and try and make sure my work is being evaluated by people with expertise. James Ritchie, who has done a lot of work supporting Maori aspirations in New Zealand, had two rules: one, don't do anything unless asked; and two, always have a guide. They're good rules and surprisingly easy to forget.

Indigenous groups are very significantly affected by global flows of capital, but those flows of capital are the source of my culture. I've worked in the largest advertising agency in New Zealand, for instance. I've been given all of the tools to understand how these flows of capital work, how these inequalities are generated. Luckily I've also been given a sensibility, somehow, and I'm trying to use that understanding in response to the aspirations of people who are most excluded from these global flows. The sensibility is about shared languages, building trust and shared senses of what is important.

AT: Could you clarify the comment you made about Malcolm X during one of the conference sessions?

DB: If you take Peter Linebaugh's story of the commons in English history: I've heard that story many times, including good, critical versions. But the concepts themselves seem to be articulated and put forward as solutions. It's not clear to me at all how advocating for a return to the commons is a solution in the contemporary environment.

However, if you look at these stories through the lens of Malcolm X, for example, think about what he would find interesting in the stories, then suddenly they become vibrant again. That's what I think Linebaugh's doing.

And I think Indigenous epistemology is something like that. If we look at issues of globalisation through various Indigenous epistemologies, or through the perspective of the developing world, or through the perspective of Public Enemy or hip hop – these are frames that we can use to open up new questions of cultural material.

AT: What are you taking back from this conference?

DB: I'll take back a great deal of pleasure about returning to Sarai, for one thing. I always feel, from the first time I came here, and also keeping track via the various publications and the Reader-list, that this a space where numerous diverse practices are being brought together in very interesting ways, with a real openness and generosity. So the discussions here are always very stimulating. I always go back thinking new things I hadn't thought about before. Seeing the range of practices people are involved in here, and how Sarai considers what's important about their work: I think that's the key thing.

I learn most from people who frame what's important in a certain way that affects my own thinking about it. When I come into meetings like this conference, my set of priorities feels like it's being transformed, in ways I can't describe. It's a crucial process, one that is often unfairly

contrasted to more 'pragmatic' concerns. The day my priorities stop being transformed through these relationships with others, is when I'll fall over…

And I see this as the big question for me: how do we put in place structures that allow us to continually have our ways of thinking and our ways of life and our priorities transformed through relationships with others?

Hopefully, that's what the networks that are starting to emerge will achieve.

Rosemary Coombe, *York University*

In Conversation with **Lawrence Liang,** *Alternative Law Forum*

LL: Your work has really been at the cutting edge in terms of the intersection between law and anthropology, intellectual property and anthropology. Could you tell us how you brought these two together, and what the terms mean to you?

RC: I come from a background in cultural anthropology, which in those days was called 'symbolic' anthropology. When I went to law school, it struck me that the only field of law that I came across where judges and lawyers seemed particularly concerned with issues of cultural meaning was in intellectual property. However, the scholarly literature at the time didn't seem to address IP as the protection of cultural forms in any way. It was very much an abstract debate about incentives to create, with no attention paid to what was getting created, or the social roles of these creations.

At the same time, I was aware of how my students reacted to the teaching of IP, how excited they got when we were talking about movies we knew, or trademarks they came across in their everyday life. And it occurred to me that these trademarks, these copyright texts, these advertisements, these jingles, everything was protected by IP in very important ways, as part of the public culture, at least of North American society, which did sculpt my purview at the time.

But I was also uncomfortably aware of the beginnings of rumbles about whether or not IP could be used as a way to help Indigenous peoples to protect their cultural innovations. And coming from anthropology, which primarily studies non-Western societies, I thought I'd done something fairly original, which was to think about consumer patterns and Western society as an anthropologist, see them as cultural forms. In addition, I was aware that this intersection between IP and Indigenous peoples was something I would eventually have to explore, given these two backgrounds.

That came about a bit more suddenly than I wanted, because I also knew that I would have to inevitably learn a big field of international law. The TRIPS agreement came about, it became necessary to understand a lot more about trade, in order to understand even domestic IP law. But I did get a phone call from Canada's Ministry of Industry, which actually administers most domains of property (besides property rights, which is within the Ministry of Heritage). They were trying to find a specialist who knew something about IP because they were having to think about how to implement the Convention of Biological Diversity, a mandate to find a means of protecting traditional knowledge. They said to me, "Well, we're thinking this isn't really an IP issue, it is a human rights issue, and we want to explore that, but we can't find anyone who knows anything about IP, who also knows anything about human rights…"

So I came up to speed on those issues pretty quickly. I think the most basic and fundamental thing that I learned – and I think I was somewhat ashamed to realise, as I was learning this for the first time – was that IP is part of the human rights system. It is not legally, in the larger sense of the term, i.e., how it is positioned globally, a property right at all; it is a cultural right within the larger human rights framework. And when you think about it that way, a whole other series of questions opens up around what cultural policy should attempt to do.

LL: Do you find a tension between these two dimensions of your work? On the one hand, it's the ethnography of the everyday, vis-à-vis consumer culture, and on the other hand, it's really in terms of your anthropological skills in dealing with IP issues relating to Indigenous people.

RC: I do, and I don't. From a very formalistic perspective, I can see why some people think there is a contradiction or tension there: because if you simply look at the activity involving the

appropriation of cultural forms that are claimed within some kind of an ownership regime, or even a liability regime, then you're saying, "Well, these two activities are the same." But I think that begs a larger question, of how actors are socially situated in the world. The kinds of appropriation I was originally concerned with are the appropriation of those who are excluded from the production of cultural texts through their position as consumers.

There are ways of consuming these corporate texts that are active interventions in the world. And in a mass-mediated environment – of course, things have changed a lot with digital technology – you get spoken to, and it is very difficult to speak back. Forms of appropriation are a particular kind of politics in regard to a particular set of hegemonic texts.

I was interested in thinking about hegemony as something which has to be constructed and reconstructed and maintained, and it is constantly resisted. With respect to Indigenous peoples, I was realising that they are perhaps, in cultural terms, even more disenfranchised than the consumer is, vis-à-vis the corporation. Indigenous peoples, at least in North America, have a history of being represented by others, and very little history of being able to represent themselves. And they are often represented falsely, and represented in stereotypical ways…

Most stereotypes reproduce a skewed understanding of the social positioning of a people. But to have that continually reproduced in the public domain is a reproduction of your social position of being abject, marginalised. These are often very offensive images in US/Canadian culture. The 'squaw' image, the 'lazy Mexican' image…And we have a long history of studies done by civil liberties unions, for instance, which show that these kinds of images are dangerous: they reduce the self-esteem of a people.

I was working on trademarks involving stereotypes of Indian people, used in sports teams – perhaps the most egregious examples. But I was also thinking, since we do have laws designed to protect against consumer confusion, that there's no reason why, at least within commercial fields, Indigenous people should not be able to use those kinds of laws to protect against commercial forms that allegedly depict them, thus leading consumers to believe that these products are made by Indigenous people.

Homi Bhabha talks about the stereotype being both something that you desire as well as something you resist; there is attraction and revulsion at the same time. You see a sort of imaginary version of the Indian being used to market everything, especially with the dawn of New Age culture: certain kinds of spirituality are thought to attend, or certain kinds of 'naturalness', from within the imagery. But the people who seem to benefit most from this normally have no connection to Indigenous people at all. So I thought Indigenous people were between a rock and a hard place…It struck me that there were certain laws implemented, and others that could be expanded, to enable Indigenous people to more fully represent themselves and prevent their misrepresentation by others.

I don't think that this is exactly the same as a corporation wanting to maintain goodwill, because a corporation only gets its goodwill from the way it behaves in public, and the quality of its goods. A lot of the appropriations I was concerned about were not simple parodies – they were often parodies that spoke to the way in which a corporation pulls power in society. I think it is fair to comment upon that. And if the corporation puts its trademark out there, as representing itself, as its corporate presence, I think it is fair, if any corporation wants to use a trademark to do that. But Indian people were not putting these stereotypes out there as representations of themselves.

The other issues have to do with more sacrilegious usages of Indigenous symbolism, which I think raise a separate set of concerns…but they are also concerns which are very differently construed in different jurisdictions.

LL: On the question of traditional environmental knowledges, one of the problems in the Indian context is that you encounter the system of property, which creates a set of conflicts, negotiated by modern IP law. In India, the problem has been that instead of thinking out the issue a little more thoroughly, the response has been a greater system of property, even if it has been a *sui generis* form. What has your experience been, in dealing with alternatives to the modern IP regime?

RC: I don't come across many Indigenous people who are very interested in an IP regime as a means of protecting traditional knowledge. But I feel that thinking about it as IP, or beginning to articulate it as an IP problem, probably drew much wider attention and much greater public focus on the issue, than it would have otherwise have gathered. I think that's been good. I believe that for many of the world's Indigenous peoples, the ability to claim some kind of rights to traditional knowledge, or some kind of rights to be treated with respect, is just one part of a larger set of claims relating to self-determination. Certainly, rights with respect to cultural heritage have been critical to a larger set of rights that have been negotiated within the United Nations system over the past decade, part of the Draft Declaration of Rights for Indigenous Peoples.

There are of course many interesting and complicated questions with respect to Indigenous identity. Certainly, there is no singular definition of Indigenous peoples that travels globally. But as you well know from the Indian context, these rights are supposed to attach to some peculiar entity known as "local communities" embodying traditional lifestyles. Now that clearly is not a term with any fixed referent, and I think it's one that's subject to various uses. Which communities can represent themselves as "local", and under what conditions? It seems to me that there is an awful lot of activity to suggest that NGOs, for instance, are very interested in helping particular villages, interested in positioning certain communities as "local" and constructing those communities' relationship to knowledge as "traditional".

The charges against such activity that I take most seriously are the ones suggesting that this creates a new set of inequalities – in the sense that perhaps those more marginalised, who might actually have greater and more important knowledge, are less likely to be able to find those kinds of cultural brokers capable of representing them in terms that can make them viable recipients of these new rights, whatever they might be.

I've always been much more in favour of a cultural policy approach, which says that maintaining diversity is important, that we should consider such diversity as a public good. Certainly, in Canada there's a long history of that kind of approach. What I would like to encourage is cross-cultural exchange and the capacity of peoples with certain kinds of knowledges of the environment to be a part and parcel of the more public process of thinking about environmental impact assessment, for example.

Indigenous people would like to be able to keep their languages alive, to be able to teach children in those languages, thus bring the value of their agricultural knowledge into the school system. This would also go a long way towards making people think those languages were valuable, and to make them understand that the traditional knowledge held by their grandparents is also valuable. This would create some intergenerational bonds, which would contribute towards cultural revitalisation. That will happen only if there are benefits, even if these are only in terms of the new employment prospects opened up by that activity.

LL: The dominant paradigm in the social sciences in India after the 1970s has been this entire tradition/modernity debate, as configured in the context of the postcolonial. Your work clearly attempts to move beyond that, and avoid the setting of the tradition/modernity debate, especially in terms of the romanticising of the Indigenous community as the eternally fixed, as "the static". In what ways have you tried to do this?

RC: I'm not sure this approach is particularly original to me. I believe that in many ways, those dichotomies are already being overturned, out in the world, in practice. Indigenous people have actually been very effective, in the global lawmaking context; to the extent that they have shown that their knowledge is innovative, it changes with time, it is not static…

This sounds a bit more radical to IP scholars than to human rights scholars, among whom this mode of assertion has been accepted for a long time. Or even to cultural policy scholars. UNICEF has certainly accepted those principles for a long time. Cultural Survival, a major organisation in the US, has propounded those ideas and shown how it is through traditions that one incorporates modernity and modern forms, and that we live in a necessarily hybridised world. But again, I think it was the Subaltern Studies school in India that made these arguments most forcefully a few decades ago. Most recently, you find a very strong statement of it in Dipesh Chakravarty's book *Provincialising Europe*.

Tradition continues to live on in the ways in which people live modernity, even while the "modern" and its reception have been infused by specific traditions today. The problem is that the traditional knowledge debate came into the legal discussions, and that most legal scholars were completely unaware of the reconstruction of traditions that has gone on.

LL: I'm also curious about how you speculate upon the intersection between the different cultures and communities you've been working with, and the market. For instance, in the Indian context, in many ways, a lot of the local languages and traditions that we speak of really received a major impetus with the emergence of cassettes. For a long time there was very little state patronage, the regional recording industry had been almost killed off with the state's setting up of Hindi as the national language, out of a political need to have a lingua franca. The emergence of cassette culture was characterised by this curious phenomenon, where a lot of the traditions would borrow from Bollywood pop tunes, and there was the counter allegation that Bollywood picks up the folk music of a large number of communities without offering any renumeration. A complex dynamic plays itself out in this manner. Where do you see some of these issues in terms of the North American context, in the future?

RC: Well, I've always thought that both the enforcement of IP and the lack of enforcement of IP are actually productive activities. They give rise to particular kinds of new cultural forms, new forms of identity and community. I have also heard, for example, that the idiom of Bollywood characters forms a kind of lingua franca for subcultures of Senegalese youth. So we are seeing, on the one hand, ways in which the global is localised. But as you mentioned, the other, perhaps surprising, development is how these new technological capacities to distribute cultural texts, and to share them, are in fact revitalising marginalised identities. We have examples of languages that people thought were extinct; surviving speakers of these have come together via the digital, though they're not physically together any more. Diasporic communities have also been similarly enabled by new technologies; and the fact of technology re-nationalising many groups in this way is also a very interesting phenomenon.

LL: A lot of progressive scholarship on IP – I'm talking about the public domain, the big names, Lessig, Boyle, Benchler, etc. – speaks in a particular manner about piracy, claiming piracy can be redeemed through acts of creativity, through the "transformative author" being resurrected. How do you make sense of the political economy aspect, as well as the anthropological, when it comes to understanding piracy that does not necessarily have a transformative author?

RC: I've always thought that the term "piracy" was not very helpful. It needs to be analytically explored; the etymology would be interesting. The distinction between transformative and non-transformative appropriations is, of course, a legal one in the first instance. And it's not particularly radical, in the sense that it's always thought of in terms of whether or not those usages were going to be considered fair use, or not.

LL: Lessig would account for a lot of what's happening in terms of peer-to-peer, through the transformative author argument; and he would dismiss the rest of what's happening as what he calls "Asian piracy" – a term considered highly objectionable and everything else, but that's the framing…

RC: He actually calls it that…?

LL: Yes, in *Free Culture*…

RC: "Asian piracy"?

LL: Yes, piracy that takes place in Asia.

RC: I think, again, that he's making a safer argument within the American context. With regard to whether those acts of piracy that involve large-scale unauthorised reproduction and distribution should be considered "productive" or not: are you asking an analytical question, a social and cultural question, or a legal question?

LL: A combination of all three, actually.

RC: As a legal question, I doubt if those acts would ever be considered productive, or acts productive in such a way that they would be overlooked in terms of royalties due to the owners of the intellectual property. From a social and cultural perspective, it's what is done with these products, and the act of producing these products, that needs to be examined more carefully. But the law is not likely to take great count of this.

It's very hard to make arguments on expressive grounds alone, particularly outside the US, because the First Amendment simply doesn't permit. It's a local ordinance that doesn't even travel across the border to Canada, for instance. Almost nothing you do with the work is considered a fair dealing with it. And in fact, it's even less likely to be appreciated when you've got a moral rights tradition that prevents forms of appropriation that distort the work to the detriment of the author's reputation.

All these are situated arguments, made to particular audiences, and they don't necessarily travel. I believe that the kinds of ways that people I've met here are thinking about these issues are in fact so much more sophisticated than the debates we get in North America.

And for that reason, I would stop reading Lessig, and stop feeling insulted by a footnote or an offhand comment made there. Instead, start making the more rigorous arguments on the basis of the practices you see, and the ethnographies of those practices, here. We need stronger policy arguments coming from places like India, that are going to have far greater purchase in the rest of the world than the kinds of arguments we see coming out of the United States.

John Frow, *University of Melbourne*

In Conversation with **Ravi Sundaram,** *Sarai-CSDS* and **Prabhu Mohapatra,** *Delhi University*

RS: I'd like to begin by asking you to go back a bit, into the background of Australian cultural studies and the distinction you would draw from both the British and the North American movements.

JF: Australian cultural studies is a bit of a myth. It's a confluence of a number of different people: Meaghan Morris, Tony Bennett, Ian Hunter, Graeme Turner, Stuart Cunningham, John Hartley, myself, working in the 1980s in Australia on what came to be identified as a common project, but which was never all that common…

Some of us came from a Marxist background, some came from feminism and other activist movements. Australian cultural studies, like British cultural studies, always identified itself as politically oriented. And in Australia, one of the things that happened was that this discipline became increasingly interested in policy, in working with government and in trying to shape the way in which policy was directed. But it was actually a very diverse movement. I think what its members had in common was a set of energies rather than a content or methodological commonality.

It's different from North American cultural studies in that it's not oriented towards identity politics: it had the kind of background in Marxist class analysis which made it a little bit more sophisticated in the way it thought of identity formations.

RS: This impetus to cultural policy seems to mark out Australian cultural studies. How do you think it would work in relationship to the state?

JF: I think it belonged to a particular moment, when a generation of former Marxists decided they had to rethink their relationship to the state, and when particularly the Labour government was closer to the intelligentsia. That moment lasted for about ten years. It collapsed as soon as a more conservative government came in, and our ties to policy formation were more or less broken.

There's still a lot of work going on, between the intelligentsia and the bureaucracy, particularly in the area of culture…a lot of work around the so-called 'creative industries', at present. But it's less strong than it used to be.

One of the interesting things about it is that it's been a model for other parts of the world. I've lived in Scotland most recently, and Australian cultural policy was very influential there, for how Scottish cultural policy should be formulated. And I know there are places in the US as well, at a fairly local level, where Australian cultural policy is a kind of model.

PM: What are the specific outcomes of this cultural policy? I'm asking this because in India we have had a particular relationship of the intelligentsia to the state, especially in the 1970s. It produced a whole range of things – film, the new wave etc., the education policy, the universities…a kind of state-backed *avant garde*, if you can call it that…

JF: That's true of Australia as well: the *avant garde* has always had government support in the post-war period. The kind of movement I'm talking about had more specifically to do with the formulation of policy. It's not exactly that we were formulating policy, but rather that we had an input into rethinking the terms in which policy was cast. People like Tim Rowse and Tony Bennett had a lot to do with government rethinking where it put its money; asking the question whether it

should be funding the elite cultural forms – the opera, the ballet – or whether it should be putting it into community arts groups, into a range of more diverse and popular activities. We were asking the questions, we did not necessarily have the answers.

We were also lobbying and developing the arguments for more support for the arts, and we were trying to demonstrate the need for subsidies for information infrastructures. It was an important thing to do, and had economic results. The Australian film industry was in part generated by intellectuals like Philip Adams and Sylvia Lawson and Meaghan Morris persuading governments to fund a film industry, which for a while was very successful.

RS: One of the curious things about the past 40 years in India, which Prabhu raised in his question to you during the conference, is the proximity of progressive intellectuals to state institutions, and the formation of an elite discourse around these intellectuals. And it seems to me that what has happened, particularly after the 1990s with the emergence of the so-called new phase of globalisation, is that, first, the project went into crisis. Then the right came in and delegitimised that project, which was in itself highly arbitrary. This seems to be a global phenomenon…

I'm wondering if we can mark the whole post-war nationalist/welfarist model of promoting the arts, promoting the intelligentsia. If we're moving away from this and moving towards more independent institutions, what would these sustainable entities look like? Where would cultural studies come in? It's a very difficult question, because you never had cultural studies in India, you had intellectuals promoting culture in the name of the state.

JF: I think what you say is right: there's been a global shift away from the close relationship between the intelligentsia and the state. The response to that among Australian cultural studies intellectuals has been, partly, a movement of withdrawal, back into more traditional academic pursuits. We've been, in a sense, debarred from our access to government. But there's also been a move into alternative areas. Some of us work not directly in the academy but in the interstices between the academy and other domains – in NGOs, in arts bureaucracies, or with Indigenous groups, or on fostering cultural relationships between Australia and Asia. One of the striking things within the past twenty years is that the intelligentsia has woken up to the fact that Australia is geographically situated within Asia, and that it is important to explore those ties. But Australia doesn't have the plethora of not-for-profit institutions – think tanks, activist pressure groups like Creative Commons – that exist in the United States. They can be very impressive entities, but only a very wealthy society can support them.

RS: When your 1997 book *Time and Commodity Culture: Essays in Cultural Theory and Postmodernity* came out – in my opinion, one of the more important documents of its time, and one that worked through a consistent series of arguments – it intimated a whole new conceptual and public debate, if you like, a series of debates. Today you gave an extremely bleak report card, both conceptual and historical, of where the public domain could take us. But you also left us with a utopian vision, in an almost Kantian sense, that the noumena intimates practices, and that's the only way out…

I'm wondering if this bleakness is indicative of our time. How can we think of conflict today after the crisis of the contemporary liberal welfare state? If the classic 19th-century opposition was between the public realm and individual rights discourse – liberalism – which became the welfare state into the 20th century, how do we re-look at conflict today? Today you have new commercial networks that are not always consistent with historical property arrangements. These networks

may be in conflict with the international regime – surely happening in front of our eyes – networks which give people access in bizarre and uncomfortable ways. Does it allow us a possibility of reflecting on that heritage? Then the situation may not look so bleak.

JF: I'm sorry if I did sound so bleak; and it's odd to be accused of being utopian at the same time…!

What you say is absolutely true. One of the things I was trying to do in *Time and Commodity Culture* is to undermine the distinction between gift exchange and commodity exchange. I also want to undermine any sharp distinction between the public sector and the private sector, because, as you say, there are all sorts of institutions technically within the private sector, but which are nevertheless in conflict with other private sector institutions, conflict which may open up gateways for access to knowledge…There is conflict over control of knowledge within the private sector, as well as between the private sector and the public sector.

In many ways, that opposition doesn't make much sense. One argument which economists make is that you can't make that distinction, insofar as private property is always served by public infrastructure. A piece of private land has a public road leading to it. So, while there is no clear and unproblematic distinction between the public and the private, there is a sharp distinction between the commons in information and those forms of information property that are exclusive and monopolistic; I tried to outline these in my presentation at this conference. These forms of property are dangerous, and becoming more so.

In that sense I'm more pessimistic, simply because things have moved on in the decade since I wrote *Time and Commodity Culture*. The force of privatisation have become not just more extensive, but also more sure of themselves; they have captured virtually every government in the world. In that sense, it's much more difficult to formulate a politics of resistance.

Also, in my presentation – and this is why I'm slightly surprised at being accused of utopianism – I did point to the range of diverse interest groups that have a stake in the public domain, have a stake in the non-privatisation of information. These groups include businessmen at every level, as well as teenagers downloading music, farmers, health insurance corporations, and so on…That set of diverse stakeholders is not unified, does not have a coherent platform.

RS: Do you think the future languages of the public domain refer to that 19th-century legacy and speak in its name? One of the senses I get, looking around, is that there are a lot of people entering this realm, who might want to enter the realm of property and the regime that you describe, but are denied space because the international arrangements today do not allow that. Perhaps in the sphere of 19th-century industrialisation there was a little bit of space for that, where the legal arrangements were not so fixed. Today, because of the tightness of the realm that you describe, the possibilities are extremely narrow. So you may have different contrasts emerging.

For instance, in Delhi you have a lot of small industries being displaced in the name of controlling pollution. And you have a lot of industries – very small units – producing "fake" goods, which are being attacked by companies. These products are not very different in quality from branded goods, and a lot of working people have access to them. I'm arguing for an expansion of the realm of conflict, if you like, and more people entering the realm. Then it becomes more interesting.

JF: Absolutely. It's a classic lesson of Marxism, isn't it, that capital eats capital. It never stops. There

are very few companies in the world today that existed 20 years ago. They change constantly, they eat each other up, they disappear. Those struggles are intensifying because the world is becoming more complex; and these things happen for good and for bad.

PM: You make a wonderful argument about the gift and commodity, especially in relation to labour. In India and also largely in other parts of the world, you have what is called 'informalisation': i.e., modes of relationship that are not regulated, or so-called not regulated…

JF: We call it "flexible"…

PM: Yes, the "flexible". This lack of regulation hinges on the idea that the state should not be present. State presence is a cost, and in order to reduce that cost, you should give more property to the poor – in effect, a proliferation of the property rights regime. I have always found this interesting: how is it that they want to give away trillion-dollar property to the poor, disperse it to stakeholders? The state has had a central role to play in the conceptualisation of these forms and the new regimes that are coming up. New in that they do not imply an absence of the state, but new forms of the ordering of people, new forms of regulation. Where do we go now? Do we ask for public regulation as distinct from state regulation?

If we argue or demonstrate that the state is, in fact, continually producing informal regimes in its underbelly, supporting, using, creating these, then the reflex of most people would be to say, "Look, we must hold on to the state, rely on it for the generating of regulatory mechanisms." The other thing would be to look for – I don't know how accurate the term is – "public regulation".

In India, "state" and "public" have not been sharply distinguished as categories. Is there a possibility now of thinking of the public as distinct from the state, and having regulatory functions? Do we call it "community regulation"? I don't know. I would like to think of this in terms of a reordering, rather than in terms of the distinction between the state and market, where the argument is that reducing the presence of the state increases that of the market, and vice versa.

JF: It's possible to think in terms of informal regulatory structures. Legal regulatory structures have always been complemented by informal systems. The problem is that whenever you're dealing with labour relations, the question is who gets to enforce the informal regulation? Unless you've got, for example, very powerful unions, or some form of organisation that counters the power of the employer, I don't see any alternative to the state being required to regulate labour relations. You're talking about a relationship between the strong and the weak. The weak have to have some way of finding their rights, of not being too disempowered in the workplace, and only a formal legal regime can sustain those rights.

PM: Strange, it's only Australians who can see this – not even the English, though we had the same colonial regime – we in fact borrowed the labour regulatory regime from Australia, with the same argument: that we are actually protecting those who are relatively weak. But unlike Australia, which started out with a huge, powerful labour movement, India started out with a weak labour movement. And then it became segmented. A vast segment emerged underneath that. So you have a small, organised, but no longer effective labour movement, now dismantled on the ground.

This issue of the state and the public crops up continuously in the realm of cultural property, intellectual property. How do you deal with this, how do you think of it in terms other than labour relations?

JF: If the "public", in all its manifestations, is to be sustained and sustainable, it has to have

structures that allow it to exist. Those structures are institutional, and they will be contested by powerful opponents. I think they have to have support – not necessarily from the state, other kinds too can be envisaged. If they have popular support, strong enough to get by without the state, that's terrific. The less we have to rely upon the state, the better.

The Australian intellectuals that I'm close to are now much less cynical about the state – we see it as much less directly a tool of capitalism than we used to. We're still cynical, no doubt, but we regard the state as a contested site, a place where things can happen if you work hard enough and if you capture the ground.

PM: If the state is the main agency through which all the privatisation and informalisation is going on, how can the state be the opposite of these?

JF: States are not monolithic. Gramsci's concept of hegemony is a useful one, precisely because for Gramsci, state power always rests on the consent or agreement of the governed, on some minimal degree of agreement to the things the state is doing. But there are limits to how far the right can appropriate the state. In the US there don't seem to be many limits, but they are there, nonetheless.

Hou Hanru, *Independent Art Curator*

In Conversation with **Shuddhabrata Sengupta,** *Sarai-CSDS*

SS: How does intellectual property become something you have to engage with in the everyday life of curation, working with artists?

HH: The first thing: working with artists is to not really consider this question, because it comes naturally afterwards, I guess. Mainly it has to do with the question of originality: how much an artist is original, in terms of his work, his thoughts, whatever. But this is also a dilemma, because basically every artist claims to be original. The smart artist would say nobody is actually original, in the sense that he is constantly inheriting a lot of things – from his education, from his practice, and especially from his collaboration with others, his encounters with other artists.

Every artist is part of a historical descent, and is also trying to struggle against and go beyond a point, to claim a certain originality…there's a theoretical possibility of trying to claim a certain personal…not copyright, but a certain characteristic. But this is impossible to define in practice.

And of course it is impossible to define in terms of legal regulation, because how can you define an artistic language in terms of copyright? This is completely ridiculous, I have to say. In my practice as a curator, instead of claiming any regulation in that sense, I prefer to encourage people to share things, together – to encourage the maximum possibility of collaboration, exchange and merging. Also, the possibility of considering going beyond the myth of the individual as romantic hero/genius. I don't think it's necessary to even consider such an issue.

SS: In your practice, do you sometimes come across a situation where an artist, say, works with found material, and a gallery says, "We have to get clearance because of intellectual property involved?"

HH: This happens all the time. Artists, particularly contemporary artists, pick up things, to a great extent. Actually, the turning point in contemporary art practice is the 'readymade'. Artists working with the 'readymade' openly claim to use found objects and turn these into personal artwork.

SS: You're talking about Andy Warhol…?

HH: Long before that – Duchamp, almost a hundred years ago. Found objects, found everything, are a part of our language today. But in some specific cases, especially when more and more artists are using video works, or found film footage, they can regularly get into trouble with the audiovisual market. However, most artists don't actually consider that. They just pick up whatever they can use. And when it goes for public exhibition in a public institution, it is the institution's responsibility to solve the problem. As a curator, I think I would always play the game on the side of the artists, to negotiate with the institution to solve the problem. We can help to articulate certain problems, on behalf of the artists and in favour of the artists.

SS: Supposing one says to an artist, "This is something you can't work with because we don't know who it belongs to…" More and more cultural material – a sign, a particular fragment of music – becomes somebody or the other's property, so that artists have less room, in a sense, to play with.

HH: This is a very new phenomenon. The whole idea of copyright and intellectual property is a new situation because of the commodification of cultural institutions. I don't think there is any

policy available that is shared by everyone. So it is up to you to negotiate, case by case. And in my experience, I've been lucky that I haven't run into many problems like this. I don't know what is going to happen tomorrow, but I think we should develop a kind of 'smuggling' strategy. At the same time we should also propose other alternatives so as to encourage discussion and debate on the question of consciously resisting market logic in the realm of cultural products. This is not easy, but it is possible.

SS: Can you say something about the idea that curation is like holding things in trust or in custody for a public, between a public and an artist? Because it's a different way of approaching something: neither owning it, nor…

HH: Yes, you might call it that. But I don't think curating is a profession. Nor is art a profession. It is about individuals coming together to share and present their ideas in society, to share the products that translate the artistic imagination. The role of the curator is basically to create a bridge between isolated artists focused on personal interests, and the more publicly articulated artists, in a public space. And from that moment on, I don't think there is any personal/individual right over an object presented to the public. An artwork is always a kind of an open text; open for interpretation and sometimes participation and re-creation through the intervention of others. What we are doing here is actually to push this possibility.

Also, as a curator I don't deny that we should have our opinions on public life and should present these in public. It's a very interesting process of sharing, negotiating and exchanging to produce projects effectively. I don't want to draw a clear line between the limits of a curator and the limits of an artist, the rights of a curator and the rights of an artist. I don't think we should operate on such a black-and-white basis.

SS: There's been some discussion at this conference of spaces like India and China in the contemporary world as being these engines of piracy, or a redistribution of intellectual property along different lines. As someone who works very closely with Chinese artists, do you see this sensibility becoming a part of what they address?

HH: Yes, I have to say, it is almost a necessity, a part of daily life, for an artist or for anyone in China to access the world through the pirated version of everything; in India too, I guess. But in the meantime, the question is how much this myth of copyright, this myth of intellectual property has been strongly empowered through the domination of certain kinds of economies – the so-called 'liberal' market, which is actually not so liberal. With the help of political powers, a certain kind of myth has been imposed on our consciousness, as a given. It's not about whether we should respect a given law or not. We have to discuss the myth itself, deconstruct it.

In practice it is true that many artists in China use pirated computer programmes. Everyone uses materials they can get from the pirate networks. And this is also a way to access and distribute the work. Especially in a place like China, where public audiovisual distribution has to go through a very strict censorship system. Piracy is how the underground – well, not so underground any more – let's say, the illegal circulation of image and sound and other materials can help artists to distribute their work. Very often, it's the only way for them to exist.

SS: What is the relationship between censorship and intellectual property?

HH: Censorship and intellectual property don't have to have a natural connection. They are separate entities. But, in practice, the censorship mechanism can easily use the logic of intellectual

property to censor certain things. This happens quite regularly. Also, the market system, which itself uses intellectual property as a self-protecting mechanism, can easily collaborate with the censorship mechanism to create a mode of social consensus to neutralise any kind of alternative thought.

SS: Do you see contemporary artists in China working to break this myth of intellectual property in their own work?

HH: Yes. There's a very interesting case. Yang Zhenzhong, a contemporary artist from Shanghai, did two articulations concerning intellectual property and piracy in a challenging urban environment: a local bus station full of the numbers of buses, route maps, the map of the city. He reproduced the same grids 20 metres away, changing all the signifiers, turning everything around to create confusion. And that provoked all kinds of questions about who has the right to design the bus station.

In another more direct work, he downloaded images of very expensive famous contemporary artworks, and then used these low-resolution images. He blew them up to the original size, made an exhibition of them, and then tried to sell all the reproductions at the same price as the original. This led to questions about the originality of the work, the market system, and of course intellectual property. More and more artists are working in this mode, consciously. The debate is not very developed yet, but it is going to be an interesting one.

Again, in the world of music and performing arts, there are more and more debates about whether a musician should defend his rights according to the market rule, or focus on making his presence felt through the avenues of pirate networks. There are some material campaigns against piracy; there are also people who say different things. So this issue is definitely getting to the forefront…

There are many possibilities. Currently, the term most used in relation to piracy is "*dao ban*". "*Dao*" means "stealing things"; "*ban*" is to "version". So, it translates as "the stolen version".

SS: And you were talking about the Chinese word for "hacker"…

HH: "Hacker" in Chinese has two translations, as far as I know. One is "*hei ke*"; it means "the black guest", "the dark guest", like someone invited from the darkness. It's very beautiful. The other is "*xia ke*"; it means someone who suddenly interrupts, enters a place like a storm, or like a shark. This is also very beautiful. I prefer "the guest from the darkness".

SS: Do you think you're an art hacker?

HH: I think more that we are all hacked by art. In reality, we are basically overtaken by what we are doing, rather than the other way around.

Conference Participants About Us

Conference Participants

Armin Medosch is a London-based writer, artist and curator, and senior associate lecturer in interactive digital media at Ravensbourne College, UK. He is a member of the University of Openness, an institution for self-learning. He has published extensively in books, catalogues, magazines and Internet platforms.

Avinash Kumar has done his doctoral research from the Centre for Historical Studies, Jawaharlal Nehru University, New Delhi, on "Making of the Hindi Literary Field: Journals, Institutions, Personalities (1900-1940)". He has written extensively on popular publishing in Hindi during the colonial period.

Awadhendra Sharan is a historian and visiting fellow at the Centre for the Study of Developing Societies. He is currently working on a research project that connects environment and urban space, with reference to the city of Delhi.

Bjorn Wijers is with the Waag Society, Amsterdam. He interests are in multimedia art and design, with a specific focus on the technical and conceptual areas of new media. He describes himself as a "complete information and music junkie".

Brian Larkin is assistant professor of anthropology at Barnard College, Columbia University. He has published widely on the materiality of media technologies and the relationship between media, urbanisation and globalisation.

Cori Hayden is assistant professor of anthropology at the University of California, Berkeley. She has worked extensively in the areas of the anthropology of science and intellectual property, benefit-sharing, and the politics and practice of bio-prospecting in Latin America, particularly in Mexico.

Danny Butt is an independent consultant He is a facilitator for Fibreculture, Australasia's peak network for Internet research and theory.

Daya Shankar teaches at the Bowater School of Management and Marketing, Deakin University, Melbourne. He has been working with the Indian government and various non-governmental organisations in India and abroad, in different managerial, management and academic positions.

Doron Ben-Atar is professor of history at Fordham University, New York, and co-director of "Crossroads of Revolution to Cradle of Reform: Litchfield, Connecticut, 1751-1833". He has published widely and is a frequent guest speaker on radio and televisions stations in the New York area.

Dorothy Kidd is associate professor of media studies at the University of San Francisco. A long-time community radio and video producer, she researches the history of autonomous media, particularly the tensions between the communications commons and the state, and the corporate enclosure of information.

Hou Hanru is a Paris-based independent art critic and curator. He is widely published in journals on contemporary art, and has curated exhibitions all over the world. His work addresses questions of globalisation and identity, and understanding contemporary art practice as it exists beyond geographical and regional boundaries.

Jane Anderson is a research fellow in Intellectual Property at the Australian Institute for Aboriginal and Torres Strait Islander Studies, an Indigenous organisation with a long history in research and advocacy for Indigenous rights in Australia.

Jane Gaines is professor of literature and English at Duke University, where she founded the programme in film/video/digital media studies. She has published widely on documentary film theory, and is the author of two award-winning books: *Contested Culture: The Image, the Voice and the Law* (1991), and *Fire and Desire: Mixed-Race Movies in the Silent Era* (2002).

Jaromil is the author of free/open source software distributed under the terms of the GNU/GPL General Public Licence. He describes himself as a "UNIX programmer and rastaman mediterranean gypsy of relevant geekness".

Jeebesh Bagchi is a media practitioner, researcher, artist and filmmaker with Raqs Media Collective, and one of the initiators of Sarai. He coordinates Sarai's Cybermohalla project with Ankur, Delhi, and the Knowledge/Culture Commons project with Alternative Law Forum, Bangalore. He is currently working on a series of inter-media and digital projects at the Sarai Media Lab.

John Frow is professor of English language and literature at the University of Melbourne. He has taught at the University of Edinburgh and the University of Queensland, and has published widely in the areas of cultural studies and literary history.

K.M. Gopakumar is currently working as an Advocacy Officer with the Affordable Medicine and Treatment Campaign. He has worked for the National Innovation Foundation, Ahmedabad, and the Institute of Intellectual Property Development, New Delhi.

Laikwan Pang is assistant professor of cultural studies at the Chinese University of Hong Kong. She has published widely in international journals on popular culture, literary theory, gender, media and sociology.

Lawrence Liang is a legal researcher with Alternative Law Forum, Bangalore. He is currently working in collaboration with Sarai on a project that seeks to interrogate the politics of media and intellectual property laws.

Lenita Cunha e Silva studies history at the University of Sao Paolo. Her areas of interest are sociology, economics, Indian history and the social history of medicine.

McKenzie Wark teaches media studies at the New School University in New York. He has published widely, online and in print, on the subjects of cyber culture, Internet theory and research and digital technologies.

Moinak Biswas heads the department of film studies at Jadavpur University, Kolkata. He has researched and published extensively on the subjects of Indian film and culture.

Monica Narula is a media practitioner, artist, filmmaker and photographer with Raqs Media Collective, and one of the initiators of Sarai. She is the coordinator of the Sarai Media Lab. She is currently working on a series of inter-media and digital culture projects at the Sarai Media Lab.

Narendra Pachkhede is an Ottawa-based independent artist, ethnographer and theorist.

Naveeda Khan is a post-doctoral fellow in the department of anthropology at Johns Hopkins University, Baltimore. She is currently engaged in turning her dissertation, which studies religious identity, sectarian violence and political affect in Pakistan, into a book.

Nick Dyer-Witheford is associate professor in the faculty of information and media studies at the University of Western Ontario. He has published widely on Marxist theory and culture, and on the politics of digital technology.

Nitin Govil is professor of media studies at the University of Virginia, Charlottesville. He is completing a co-authored study of the contemporary Indian film industry, and is researching the intersections between cultural flows, audiovisual piracy and global media policy.

Peter Jaszi teaches at the Washington College of Law of American University in Washington, DC, where he also directs the Glushko-Samuelson Intellectual Property Law Clinic. He has published widely on copyright history and theory, and is an experienced copyright litigator and specialist in domestic and international copyright law.

Peter Linebaugh is professor of history at the University of Toledo in Ohio. He is the author of *The London Hanged*, co-author of *The Many-Headed Hydra*, and editor of *Albion's Fatal Tree*, among other publications.

Philippe Cullet teaches in the law department of the School of Oriental and African Studies, London. He specialises in international and comparative environmental law and intellectual property, and has published widely in these areas.

Ravi Sundaram is a fellow of the Centre for the Study of Developing Societies, Delhi, and one of the initiators of Sarai. He coordinates the Publics and Practices in the History of the Present project at Sarai.

Rosemary Coombe teaches at York University, Toronto. Her research focuses on the intersection of anthropology, law, and cultural studies on issues relating to cultural rights and the politics of globalising intellectual property. She has published widely in these areas.

Sanjay Sharma is a historian teaching at Delhi University and Zakir Husain College, New Delhi. He has worked as a freelance journalist and a broadcaster for the BBC, and is an editorial collaborator in Sarai's Hindi publications.

Sharon Daniel is associate professor of film and digital media at the University of California, Santa Cruz. Her research involves collaborations with local and online communities, using information and communication technologies as new sites for public art in the interest of social justice.

Shuddhabrata Sengupta is a media practitioner, artist, filmmaker and writer with Raqs Media Collective, and one of the initiators of Sarai. He coordinates the distributed research network project at Sarai. He is currently working on a series of inter-media and digital culture projects at the Sarai Media Lab.

Shujen Wang is associate professor in the department of visual and media arts at Emerson College. She has published widely in international journals of anthropology, popular culture, film and media, and authored studies on piracy. She is currently working on a book project examining global copyright governance and film and music industries in post-WTO China and Taiwan.

Sibaji Bandyopadhyay is a literary critic and creative writer, and senior fellow at the Centre for Studies in Social Sciences, Kolkata. He has authored a number of volumes of critical essays in Bengali and English.

Silvan Zurbruegg is a Zurich-based software programmer. He recently worked on the development of code for the cultural file-sharing application Apnaopus (http://apnaopus.var.cc), which emerged from a digital collaboration with Raqs Media Collective, Delhi.

Siva Vaidhyanathan is assistant professor of culture and communication at New York University. Earlier a professional journalist and now a cultural historian and media scholar, he has published widely on the subject of intellectual property.

Solomon Benjamin is an independent researcher who has collaborated with Sarai on various projects in the area of urban studies. He has recently initiated the Collaborative for the Advancement of Studies in Urbanism through Mixed Media in Bangalore. His work focuses on urban governance/planning and local economic development.

Sophea Lerner is a radiomaker, sound engineer and new media artist teaching sonic arts and media at the Centre for Music & Technology in Helsinki. Her work focuses on collaborative practice, physical performance, experimental radio and new media art.

Sudhir Krishnaswamy teaches law at Pembroke College, Oxford. He pursues his interests in intellectual property law as an independent research fellow in collaboration with Sarai's Knowledge/Culture Commons project.

Swapan Chakravorty teaches at the department of English, Jadavpur University, Kolkata. He writes on contemporary literature and print cultures. He has published widely in English and Bengali, on the subject of 19th- and 20th-century cultural studies, as well as the Renaissance.

Tahir Amin is a lawyer currently working with Alternative Law Forum, Bangalore, on intellectual property issues and the public domain. He also works on legal issues for the Affordable Medicine and Treatment Campaign in India.

Victoria Donkersloot is a Rotterdam-based graphic designer. She recently worked as the interface designer for the cultural file-sharing application Apnaopus (http://apnaopus.var.cc), which emerged from a digital collaboration between Silvan Zurbruegg, a Zurich-based software programmer, and Raqs Media Collective, Delhi.

Ideas from the presentations of Armin Medosch, Lawrence Liang, Naveeda Khan, Sharon Daniel, Shujen Wang, Solomon Benjamin and Sophea Lerner appear in their contributions to *Sarai Reader 05: Bare Acts* (Delhi, March 2005). A pdf file of this publication is accessible for free online browsing and download at http://www.sarai.net/reader/reader_05.html

About Us

ALF and Sarai-CSDS came together on the cross-disciplinary collaborative research project 'Intellectual property and the Knowledge/Culture Commons' in March 2002. Despite our diverse backgrounds, we recognise the central role that intellectual property law (IPL) plays in the globalised 'knowledge economy', and acknowledge that in the near future, intellectual property will be one of the most significant sites of conflict over the production and control of knowledge and culture.

The emergence of new digital environments and low-cost methods of replication and proliferation has transformed contemporary media experiences. Millions of people now have access to some form of communication technology, resulting in serious social conflicts around property rights over films and music in digital formats. Further, the emerging interface between communications technology and software is being registered at the ground level more than ever before: the entire VCD and MP3 copy industry is software driven. On the one hand, if cheap copy culture has broadened people's access to communication and media forms, the new TRIPS-based international legal regime seeks to restrict and regulate access through stronger laws and increased enforcement.

In this fast-changing scenario, there is not a single social science study on the impact of intellectual property law on the expansion of media access or how this has transformed daily life in India. The discourse on intellectual property law is dominated by consultancy firm reports on piracy, the rhetoric of legal firms committed to an increasingly unsuccessful enforcement regime, and dramatic journalism documenting intellectual property violations. As a result, the entire debate on intellectual property (policy, legislation and newspaper reports) rests on an extremely thin research base. Not surprisingly, this discourse is silent with regard to the complex and unequal social arrangements that shape media and computer cultures and meanings in the localities and streets of urban India, where so much of media is consumed and distributed.

The ALF-Sarai project explores the following areas:

>The modes whereby intellectual property issues have been shaped by social and cultural practices around communications technologies in contemporary India. These include the new urban networks and markets that allow easy distribution and exhibition of a new constellation of media products: video CDs and DVDs, audiotapes and CDs, media software and cable television.

>The nature of the legal regimes emerging around IPL: policy change, law enforcement and piracy debates, dramatic enforcement efforts, emerging jurisprudence in the lower courts, and the lobbying by law firms around IPL.

>Legal innovations to overcome the limits of US-style enforcement, and to creatively address the large informal networks of media distribution in India. These include public domain architectures, open licences and registries, and a dialogue with open source practices. We seek to read licences, not merely as legal documents but also as cultural texts. We will attempt to survey the various innovative licensing mechanisms that have arisen after the GNU/GPL.

Pedagogical Initiatives

The first serious challenge to redefine the idea of a collaborative community came in the form of the free software and open source movements, which saw the development of the operating system GNU/Linux through contributions by thousands of programmers across the world. Taking our inspiration from the open source movement, we examine the following questions:

>How can we attempt to replicate the open source model in the social sciences and in legal scholarship?

>What does it mean to create a community of researchers in significant contemporary legal areas?

>How do we sustain such a community?

Critical Public Legal Resources (CPLR)

We seek to create a body of critical resources for the legal research community, through the compilation of cases and other readings collated collaboratively. The idea is similar to the way in which the source code for GNU/Linux grew, namely, contributions by academics, students and other users from different disciplines. These materials will be available as traditional resource books as well as online. The first set of these public resources will be on the three core areas of intellectual property: Copyright, Trademarks and Patents. These resources will also include specialised areas for which individuals can take editorial responsibility.

Media Archive

This will host a large body of ethnographic and other materials from fieldwork relating to film, cable TV, music and software networks. It will include interviews, media materials, court documents and affidavits, background materials for critical cases on IP, and documentation of advocacy groups working in the field of intellectual property.

Engaging the Public

It is critical for ALF and Sarai that we build a strong community that contributes to the debate on intellectual property and contemporary practices. We maintain an email discussion list (commons-law@sarai.net), that over several months has seen an active community developing around the issues of intellectual property and the public domain. The list archive contains interesting debates on culture and IP in India and the world, and is available at http://mail.sarai.net/mailman/listinfo/commons-law

Previous ALF-Sarai Events

'The Daily life of Intellectual Property Law', December 2002 Workshop, Delhi
http://www.sarai.net/events/ipl/ipl.htm

'New Technologies, Social Knowledge and Intellectual Property Law',

November 2003 Workshop, Delhi (in collaboration with Hivos, Bangalore)
http://www.sarai.net/events/sk_ip/sk_ip.htm

'Social Practices and Intellectual Property Law', July 2004 Workshop, Bangalore

'Contested Commons/Trespassing Publics', January 2005 Conference, Delhi

http://www.sarai.net/events/ip_conf.htm

Sarai-CSDS is South Asia's first public initiative on urban culture, media and daily life. Established in 2000, Sarai includes both scholars and practitioners who collaborate with the wider community in generating critical research insight and knowledge in the public domain. The past few years have witnessed the explosive growth of a new urban media culture in India, transforming the terms of popular culture as it is lived at the level of daily life. Sarai is an effort to understand and creatively intervene in this new media space. Sarai is a programme of the Centre for the Study of Developing Societies in Delhi, one of India's best-known research centres, with traditions of dissent and a commitment to public intellectual discourse. **www.sarai.net**

Alternative Law Forum (ALF) is an important reference point for critical legal practice in India. Its activities include *pro bono* litigation, alternative dispute resolution and research. In 2001, ALF organised India's first Alternative Lawyering Conference in Bangalore, which witnessed presentations by leading civil liberties, *adivasi* rights, and feminist lawyers among others. ALF is made up of a team of young practitioners, academics and researchers whose greatest challenge is to experiment with various creative forms of engaging the law, both within its own terms as well as interrogating it from an interdisciplinary perspective. The IPL project is one of ALF's most significant research initiatives. **www.altlawforum.org**

The Public Service Broadcasting Trust (PSBT) represents the confluence of energies to shape the contours of public broadcasting in India in a manner that validates the public nature of the media in our society. It is an attempt to foster a shared public culture of broadcasting that is as exciting and cutting edge, as it is socially responsive and representative of democratic values. In seeking to do this, PSBT attempts to situate a new vocabulary and activism at the very heart of broadcasting in India. **www.psbt.org**

The Sarai Reader Series is a cutting-edge collection of original writing and images by theorists, critics, philosophers, activists, artists, designers, media practitioners, programmers and photographers from around the world. The books bring to the fore a series of questions, reflections and experiences that mark the encounter between knowledge and power, crises and media, technology and culture, people and machines, and cities and citizens.

> The Sarai Readers that are published annually, focusing each time on a new and different theme, have become important aids for those who wish to explore the frontiers of the world of ideas and deal with the range of new issues that confront us today. The Reader is a unique product, even in terms of form: neither book nor journal, it is a purely experimental enterprise that combines contributions that range from the academic to the literary, from the purely textual to the visual, from detailed ethnographic reports to fairly dense theoretical writings. In fact, it will not be an exaggeration to say that the Sarai Reader embodies, in every sense, the collapse of all boundaries of form, style and genre.
>
> – *Seminar*, September 2005

Sarai Reader 01: The Public Domain
Paperback; 248 pages, Rs 250

Sarai Reader 02: The Cities of Everyday Life
Paperback/Hardback; 364 pages, Rs 250

Sarai Reader 03: Shaping Technologies
Paperback; 379 pages, Rs 295

Sarai Reader 04: Crisis/Media
Paperback; 484 pages, Rs 295

Sarai Reader 05: Bare Acts
Paperback; 584 pages, Rs 350

Books are also available for free download in pdf format on the web at:
http://www.sarai.net/journal/journal.htm

The Sarai Reader Series is published by the Centre for the Study of Developing Societies, Delhi.